

1 Kevin E. Gilbert, Esq. (SBN: 209236)

kgilbert@ohhlegal.com

2 Nicholas D. Fine, Esq. (SBN: 285017)

nfine@ohhlegal.com

3 **ORBACH HUFF & HENDERSON LLP**

4 6200 Stoneridge Mall Road, Suite 225

Pleasanton, CA 94588

5 Telephone: (510) 999-7908/Facsimile: (510) 999-7918

6 David J. Aleshire, City Attorney (SBN: 65022)

7 **CITY OF RICHMOND/CITY ATTORNEY'S OFFICE**

450 Civic Center Plaza

8 Richmond, CA 94804-1630

Telephone: (510) 620-6509/Facsimile: (510) 620-6518

9 Attorneys for Defendants

10 CITY OF RICHMOND, CHIEF OF POLICE BISA FRENCH,

11 OFFICERS TOM TRAN, MARK HALL and CEDRIC TAGORDA

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 IVAN GUTZALENKO, Deceased, through his Co-
15 Successors in Interest, N.G. and N.I.G., minors through
16 their mother and Next Friend, Honey Gutzalenko,
individually and as Co-successors in Interest for IVAN
GUTZALENKO, Deceased,

17 Plaintiffs,

18 v.

19 CITY OF RICHMOND, et al.,

20 Defendants.

Case No. 22-cv-02130-EMC

**DECLARATION OF NICHOLAS FINE IN
SUPPORT OF DEFENDANTS CITY OF
RICHMOND, CHIEF OF POLICE BISA
FRENCH, OFFICERS TOM TRAN, MARK
HALL AND CEDRIC TAGORDA'S MOTION
FOR SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT**

DATE: March 6, 2025

TIME: 1:30 p.m.

DEPT: Courtroom 5, 17th Floor

JUDGE: Hon. Edward M. Chen

1 I, Nicholas D. Fine, if called upon to testify will competently testify as follows:

2 1. I am an attorney at law duly licensed to practice before all the courts in the State of
3 California and the United States District Court – Northern District of California. I am an attorney with
4 the law firm of Orbach Huff + Henderson LLP, and one of the attorneys of record for Defendants CITY
5 OF RICHMOND (“City”), CHIEF OF POLICE BISA FRENCH (“Chief French”), and OFFICERS TOM
6 TRAN, MARK HALL and CEDRIC TAGORDA (“Officers”) (collectively, “City Defendants”) in the above-
7 referenced matter. If called and sworn as a witness to testify, I am competent to testify and would testify
8 from my own personal knowledge as to the facts set forth in this declaration, except as to those matters
9 that are stated on information and belief herein.

10 2. I submit this declaration for the purpose of submitting evidence in support of City
11 Defendants’ Motion for Summary Judgment or, in the alternative, Partial Summary Judgment.

12 3. Attached hereto as **Exhibit 1** is a true and correct copy of the operative Second Amended
13 Complaint, filed by Plaintiffs IVAN GUTZALENKO, Deceased (“Decedent”), through his Co-Successors in
14 Interest, N.G. and N.I.G., minors through their mother and Next Friend, Honey Gutzalenko, individually and as
15 Co-successors in Interest for IVAN GUTZALENKO, Deceased (“Plaintiffs”), on August 9, 2023.

16 4. Attached hereto as **Exhibit 2** is a true and correct copy of the deposition transcript of
17 Defendant Officer Tom Tran, with relevant portions highlighted, taken remotely on September 5, 2024.

18 5. Attached hereto as **Exhibit 3** is a true and correct copy of the deposition transcript of
19 Defendant Officer Cedric Tagorda, with relevant portions highlighted, taken remotely on October 30,
20 2024.

21 6. Attached hereto as **Exhibit 4** is a true and correct copy of the deposition transcript of
22 Defendant Officer Mark Hall, with relevant portions highlighted, taken remotely on September 5, 2024.

23 7. Attached hereto as **Exhibit 5** is a true and correct redacted copy of “Officer Tran [Conf
24 City_840]” which is Defendant Officer Tran’s body-worn camera video from the incident underlying
25 this litigation, and which the City produced in discovery in this action on or about October 7, 2022, in
26 response to Plaintiffs’ First Set of Requests for Production of Documents to City Defendants.

27 ///

28 ///

/s/ Nicholas D. Fine
Nicholas D. Fine

EXHIBIT 1

JOHN L. BURRIS Esq., SBN 69888
BENJAMIN NISENBAUM, Esq., SBN 222173
JAMES COOK Esq., SBN 300212
BURRIS, NISENBAUM, CURRY & LACY, LLP
Airport Corporate Centre
7677 Oakport Street, Suite 1120
Oakland, California 94621
Telephone: (510) 839-5200
Facsimile: (510) 839-3882
John.Burris@johnburrislaw.com
James.Cook@johnburrislaw.com
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IVAN GUTZALENKO, Deceased, through his
Co-Successors in Interest, N.G. and N.I.G.,
minors through their mother and Next Friend,
Honey Gutzalenko, individually and as Co-
successors in Interest for IVAN
GUTZALENKO, Deceased,

Plaintiffs,

vs.

CITY OF RICHMOND, a public entity;
RICHMOND CHIEF OF POLICE BISA
FRENCH, in her individual and official
capacities; TOM TRAN, individually and in his
official capacity as a police officer for the City
of Richmond; MARK HALL, individually and
in his official capacity as a police officer for the
City of Richmond; CEDRIC TAGORDA
individually and in his official capacity as a
police officer for the City of Richmond;
AMERICAN MEDICAL RESPONSE WEST, a
corporate entity; DAMON RICHARDSON; and
DOES 1-10, Jointly and Severally,

Defendants.

CASE NO.: 3:22-cv-02130-CRB

SECOND AMENDED COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. This is an action for damages brought pursuant to Title 42 U.S.C. §§ 1983 and
3 1988, and the Fourth and Fourteenth Amendments to the United States Constitution, under
4 California Civil Code Section § 52.1, and under the common law of California, for the
5 defendants' use of force against Decedent IVAN GUTZALENKO.

JURISDICTION

6
7 2. This action arises under Title 42 of the United States Code, § 1983. Title 28 of
8 the United States Code, §§ 1331 and 1343 confers jurisdiction upon this Court. The unlawful
9 acts and practices alleged herein occurred in the City of Richmond, California, which is within
10 the judicial district of this Court. This Court also has supplemental jurisdiction over Plaintiffs'
11 state law causes of action under 28 U.S.C. § 1367.

PARTIES

12
13 3. Plaintiff N.G., a minor, is the son of IVAN GUTZALENKO, Deceased, and a
14 resident of the State of California. Plaintiff, by and through their mother and Guardian ad Litem,
15 Honey Gutzalenko, brings these claims individually for wrongful death and violation of their
16 personal rights, and as co-successors in interest for their father, Decedent IVAN
17 GUTZALENKO, asserting survival claims for IVAN GUTZALENKO, Deceased. They bring
18 these claims under state and federal law.

19 4. Plaintiff N.I.G., a minor, is the daughter of IVAN GUTZALENKO, Deceased,
20 and a resident of the State of California. Plaintiff, by and through their mother and Guardian ad
21 Litem, Honey Gutzalenko, brings these claims individually for wrongful death and violation of
22 their personal rights, and as co-successors in interest for their father, Decedent IVAN
23 GUTZALENKO, asserting survival claims for IVAN GUTZALENKO, Deceased. They bring
24 these claims under state and federal law.

25 5. Defendant CITY OF RICHMOND ("CITY") is a public entity established by the
laws and Constitution of the State of California, and owns, operates, manages, directs, and
controls the Richmond Police Department ("RPD") which employs defendants in this action.

1 6. Defendant Richmond Chief of Police BISA FRENCH, at all material times, was
2 employed as Chief of Police of the RPD by Defendant CITY, and she was acting within the
3 course and scope of that employment. As Chief of Police of the RPD, Defendant FRENCH was
4 a policy-making official for Defendant CITY with the power to make official and final policy
5 for the RPD. Defendant FRENCH is being sued in her individual and official capacities.

6 7. Defendant TOM TRAN, at all material times, was employed as a police officer
7 at RPD and was acting within the course and scope of that employment. He is being sued in his
8 individual, and official capacities.

9 8. Defendant MARK HALL, at all material times, was employed as a police officer
10 at RPD and was acting within the course and scope of that employment. He is being sued in his
11 individual, and official capacities.

12 9. Defendant CEDRIC TAGORDA, at all material times, was employed as a police
13 officer at RPD and was acting within the course and scope of that employment. He is being
14 sued in his individual, and official capacities.

15 10. Defendant AMERICAN MEDICAL RESPONSE WEST (Hereinafter
16 “AMRW”), is a corporate entity, that employed paramedics, including Damon Richardson, who
17 assisted City of Richmond police officers in detaining and arresting Gutzalenko. AMRW was
18 also in charge of company policies and rules regarding their paramedics and technicians.

19 11. Defendant DAMON RICHARDSON, at all material times, was employed as a
20 paramedic for AMERICAN MEDICAL RESPONSE WEST, and was acting within the course
21 and scope of that employment to assist the CITY OF RICHMOND police officers in detaining
22 and arresting IVAN GUTZALENKO. He is being sued in his individual and official capacities.

23 12. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1-
24 50, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs are
25 informed and believe and thereon allege that each Defendant so named is responsible in some
manner for the injuries and damages sustained by Plaintiffs as set forth herein. Plaintiffs will

1 amend this Complaint to state the names and capacities of DOES 1-50, inclusive, when they
2 have been ascertained.

3 13. Plaintiffs are informed and believe, and thereon allege that each of the Defendants
4 sued herein was negligently, wrongfully, and otherwise responsible in some manner for the
5 events and happenings as hereinafter described, and proximately caused injuries and damages to
6 Plaintiffs and Decedent. Further, one or more DOE defendants was at all material times
7 responsible for the hiring, training, supervision, and discipline of other defendants, including
8 DOES 1-10.

9 14. Plaintiffs are informed and believe, and thereon allege, that each of the
10 Defendants was at all material times an agent, servant, employee, partner, joint venturer, co-
11 conspirator, and/or alter ego of the remaining Defendants, and in doing the things herein alleged,
12 was acting within the course and scope of that relationship. Plaintiffs are further informed and
13 believe, and thereon allege, that each of the Defendants herein gave consent, aid, and assistance
14 to each of the remaining Defendants, and ratified and/or authorized the acts or omissions of each
15 Defendant as alleged herein, except as may be hereinafter otherwise specifically alleged.

16 15. At all material times, each Defendant was jointly engaged in tortious activity, and
17 was fundamentally involved in, and an integral participant to, the events and violations of rights
18 described herein, resulting in the deprivation of Plaintiffs' and Decedent's constitutional rights
19 and other harm.

20 16. The acts and omissions of all Defendants as set forth herein were at all material
21 times pursuant to the actual customs, policies, practices, and procedures of Defendant CITY.

22 17. At all material times, each Defendant acted under color of the laws, statutes,
23 ordinances, and regulations of the State of California.

24 18. Plaintiffs timely and properly filed a tort claim pursuant to Cal. Gov. Code § 910
25 et seq., and this action is timely filed within all applicable statutes of limitation.

19. This complaint may be pled in the alternative pursuant to Federal Rule of Civil
Procedure 8(d)(2).

GENERAL ALLEGATIONS

20. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

21. On March 10, 2021, the Richmond Police Department received a call for service about a man causing a disturbance in a local furniture store on the 12600 block of San Pablo Avenue. The man was described as a white man in a black hoodie and jeans. Defendant RPD Officer Tom Tran arrived at the scene first and, from his patrol car, saw a man matching that description walking down San Pablo Avenue. That man was IVAN GUTZALENKO. Defendant TRAN requested via radio that an ambulance stage nearby, then approached IVAN GUTZALENKO on foot. Immediately upon making verbal contact with IVAN GUTZALENKO, Defendant TRAN realized that IVAN GUTZALENKO was in need of medical aid and was possibly intoxicated and/or experiencing a medical or mental health crisis. IVAN GUTZALENKO had a dark purple mark on his forehead, was bleeding profusely from one of his hands, and had difficulty focusing on and communicating with Defendant TRAN. As IVAN GUTZALENKO began to walk southbound down San Pablo Avenue, Defendant TRAN followed behind. IVAN GUTZALENKO was visibly in physical distress and appeared to be having difficulty breathing. Defendant TRAN questioned IVAN GUTZLENKO about what was wrong, and IVAN GUTZALENKO responded “I can’t breathe.” Before making it to the end of the block, MR. GUTZALENKO collapsed and began writhing around on the ground, still breathing in a distressed manner. As MR. GUTZALENKO shifted around on the ground, Defendant TRAN used his hand to attempt to keep IVAN GUTZALENKO positioned on his side, and verbally encouraged IVAN GUTZALENKO to remain on his side to better effectuate his breathing.

22. Shortly after IVAN GUTZALENKO fell to the ground, Defendant RPD Officer MARK HALL arrived on the scene. Defendant HALL joined Defendant TRAN in questioning MR. GUTZALENKO about his identity, what was wrong with him, if he had taken any drugs or

1 other substances that they should be aware of in order to help him, and other questions. During
2 this time, IVAN GUTZALENKO continued his labored breathing and Defendant TRAN
3 continued trying to keep IVAN GUTZALENKO on his side in a “recovery” position. Minutes
4 later, an AMRW ambulance arrived. As the AMRW responders began to bandage IVAN
5 GUTZALENKO’s hands, he became agitated and attempted to keep his hands away from them
6 by moving his hands and body. Defendants TRAN and HALL then attempted to handcuff IVAN
7 GUTZALENKO in order to gain his compliance with AMRW responders. As Defendant HALL
8 held IVAN GUTZALENKO’s left arm, Defendant TRAN used his body weight to pin IVAN
9 GUTZALENKO to the ground face down in a prone position, by placing his knee into IVAN
10 GUTZALENKO’s back and leaning forward onto that knee. Defendant TRAN placed handcuffs
11 around IVAN GUTZALENKO’s right wrist, then handed them off to Defendant HALL, who
12 attempted to place the other end of the handcuffs around IVAN GUTZALENKO’s left wrist. As
13 Defendant HALL tried to complete the handcuffing, Defendant TRAN continued applying his
14 body weight onto IVAN GUTZALENKO’s back to keep him pinned in a prone position, and
15 forcibly kept IVAN GUTZALENKO’s right arm positioned behind his back. Around this time,
16 Defendant RPD Officer CEDRIC TAGORDA joined in and held IVAN GUTZALENKO’s legs
17 down while Defendants TRAN and HALL tried to handcuff him. As IVAN GUTZALENKO
18 struggled to breathe in that prone, asphyxiating position, and under Defendants’ body weight, he
19 told Defendants “I can’t breathe!” Defendant TRAN continued using his knee to keep IVAN
20 GUTZALENKO pinned down in a prone position, despite understanding that IVAN
21 GUTZALENKO appeared to be experiencing a medical emergency and was struggling to
22 breathe. Defendant HALL threatened to use a Taser and pepper spray on IVAN
23 GUTZALENKO, despite understanding the same. Defendants finally handcuffed IVAN
24 GUTZALENKO when he suddenly ceased struggling and went limp, after roughly 2 to 3
25 minutes. During that time, IVAN GUTZALENKO was in a prone or modified prone position on
the ground and compressed by Defendants’ body weight and force.

23. After handcuffing IVAN GUTZALENKO, the Officers put him into the recovery position. GUTZALENKO was still breathing. He was not resisting, thrashing, or moving in any way. He did not pose any threats to the officers, the paramedics, himself, or the public. While GUTZALENKO was handcuffed, and remaining still on the ground, AMRW paramedic RICHARDSON made the decision to use “Versed,” a chemical restraint, on GUTZALENKO. RICHARDSON then injected Gutzalenko with the drug Versed, which is also known as “Midazolam.” Contrary to proper medical use, RICHARDSON used Versed on GUTZALENKO while Gutzalenko showed no signs of any behavioral issue or agitation. RICHARDSON also failed to “aspirate” the syringe prior to administering the medication, meaning he did not check to see if the needle had penetrated a vein, which is a critical step since the Midazolam doses permitted to be administered by AMRW depend on whether the dosage is administered intramuscularly (which is taken up of the body much more slowly and in lesser concentration) as opposed to intravenous administration (which is taken up by the body much faster and in much greater concentration, and is much more dangerous to the patient than intramuscular administration). Aspiration is the simple action of pulling the plunger back after the needle is placed in the skin, to determine whether blood flows back into the syringe. If blood flows back in, then the needle is in a blood vessel. For intramuscular administration, the needle must be withdrawn, re-inserted, and re-aspirated. All of RICHARDSON’s action in administering the Versed are clearly visible on the video, and it is clear from the video that he did not aspirate the syringe. RICHARDSON then administered a dose of versed that was meant for the muscle directly into GUTZALENKO’s vein instead. GUTZALENKO stopped breathing with 90 seconds of the dose of Versed, consistent with intravenous administration of an overdose of Versed. The AMRW technicians then took IVAN GUTZALENKO to Summit Hospital in Oakland, where he was pronounced dead.

24. After an autopsy conducted on March 11, 2021, the Contra Costa County Coroner’s Division determined that IVAN GUTZLANEKO’s cause of death was prone restraint asphyxia and cardiac arrest while under the influence of methamphetamine.

1 25. Despite being disoriented and in a medical emergency, IVAN GUTZALENKO
2 remained non-threatening throughout his encounter with Defendants TRAN, HALL, and
3 TAGORDA, and reasonable officers would have understood that IVAN GUTZALENKO posed
4 no threat to them or others. Similarly, RICHARDSON, as an AMRW paramedic, should have
5 known that it was excessive and unreasonable force to use the chemical restraint Versed to
6 restrain GUTZALENKO while Mr. GUTZALENO was cuffed, in the recovery position, and not
7 resisting in any way. At the time of this death, IVAN GUTZALENKO had a recreational amount
8 of methamphetamine in his system – in an amount too low to cause his death. Defendants had
9 no knowledge of IVAN GUTZALENKO’s use of methamphetamine at the time of this incident.

10 26. During substantial periods of time, Defendants TRAN, HALL, and TAGORDA
11 each kept their own body weight on IVAN GUTZALENKO’s back, arms, and legs to keep him
12 in a prone position on the ground without objectively reasonable justification. Reasonable
13 officers would have clearly known that such conduct constituted excessive force under these
14 circumstances, and posed a substantial risk of death or serious injury to IVAN GUTZALENKO
15 as the Ninth Circuit explained in *Drummond v. City of Anaheim*, 343 F.3d 1062 (9th Cir. 2003),
16 *cert. denied*, 542 U.S. 918 (2004). During those times, reasonable officers, post-*Drummond*,
17 would have understood that they were using deadly force. Defendants gave no warning that they
18 might use deadly force. Defendants TRAN, HALL, TAGORDA, and RICHARDSON acting as
19 integral participants, and under the totality of the circumstances, used, caused the use of, and
20 tolerated the use of a high level of excessive and injurious force against IVAN GUTZALENKO
21 that in fact caused his death. The totality of the force used and tolerated by Defendants TRAN,
22 HALL, TAGORDA, and RICHARDSON was unnecessary, excessive, and deadly. Further,
23 none of the defendant officers intervened to stop other officers, or RICHARDSON, from using
24 the excessive and illegal force that was evident in front of them.

25 27. Defendants TRAN, HALL, TAGORDA, and RICHARDSON chose to restrain
IVAN GUTZALENKO in the manner they did ostensibly in order to facilitate medical care.
Yet, Defendants used a level of force so that their restraint of IVAN GUTZALENKO constituted

1 an arrest. Defendants lacked probable cause to believe IVAN GUTZALENKO had committed
 2 any arrestable crime, and they lacked reasonable suspicion to lawfully detain IVAN
 3 GUTZALENKO to investigate any crime.

4 28. At all material times, and alternatively, the actions and omissions of each
 5 defendant were intentional, wanton and/or willful, conscience shocking, reckless, malicious,
 6 purposely harmful and/or deliberately indifferent to IVAN GUTZALENKO's and Plaintiffs'
 7 rights, done with actual malice, grossly negligent, negligent, and objectively unreasonable.

8 29. Each Defendant's acts and/or omissions as set forth above proximately caused
 9 Plaintiffs to sustain the following injuries and damages, past and future, among others:

- 10 a. Wrongful death of IVAN GUTZALENKO;
- 11 b. Hospital and medical expenses (Survival claims);
- 12 c. Coroner's fees, funeral, and burial expenses (Survival claims);
- 13 d. Loss of familial relationships, including loss of love, companionship,
 14 comfort, affection, consortium, society, services, solace, and moral
 support (based on wrongful death and loss of familial association);
- 15 e. Violation of constitutional rights;
- 16 f. Pain and Suffering, including emotional distress (based on individual
 §1983 claims for loss of familial association);
- 17 g. IVAN GUTZALENKO's loss of life, pursuant to federal civil rights law
 18 (based on Survival claims and Decedent's federal §1983 claims);
- 19 h. IVAN GUTZALENKO's conscious pain and suffering, pursuant to federal
 20 civil rights law (based on Survival claims and Decedent's federal §1983
 claims);
- 21 i. All damages, penalties, and attorneys' fees and costs recoverable under 42
 22 USC §§ 1983, 1988, California Civil Code §§ 52, and 52.1, California
 23 Code of Civil Procedure § 1021.5, and as otherwise allowed under
 California and United States statutes, codes, and common law.

24 **COUNT ONE**
42 USC § 1983
 25 **PLAINTIFFS AGAINST DEFENDANTS TRAN, HALL, TAGORDA, RICHARDSON,**
and DOES 1-10

1 30. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth
2 here.

3 31. By the actions and omissions described above, Defendants TRAN, HALL,
4 TAGORDA, RICHARDSON, and DOES 1-10 violated 42 USC § 1983, depriving Plaintiffs
5 N.G., N.I.G., and/or Decedent IVAN GUTZALENKO of the following clearly established and
6 well-settled constitutional rights protected by the First, Fourth, and Fourteenth Amendments to
7 U.S. Constitution:

- 8 a. IVAN GUTZALENKO's right to be free from unreasonable searches and
9 seizures as secured by the Fourth Amendment (survival and wrongful death
10 claims);
- 11 b. IVAN GUTZALENKO's right to be free from excessive and unreasonable
12 force in the course of a seizure, including the use of unlawful deadly force, as
13 secured by the Fourth Amendment (survival and wrongful death claims);
- 14 c. The right to be free from wrongful government interference with familial
15 relationships and Plaintiffs' and Decedent's right to companionship, society,
16 and support of each other, through the use of deadly force that shocks the
17 conscience and that is used without a legitimate law enforcement purpose, and
18 by otherwise interfering with their familial associational rights as secured by
19 the First and Fourteenth Amendments (Plaintiffs' individual Familial
20 Association claims).

21 32. Defendants TRAN, HALL, TAGORDA, RICHARDSON, and DOES 1-10
22 subjected Plaintiffs and Decedent to their wrongful conduct, depriving Plaintiffs and Decedent of
23 rights described herein, knowingly, maliciously, and with conscious and reckless disregard for
24 whether the rights and safety of Plaintiffs (individually and on behalf of IVAN GUTZALENKO,
25 Deceased) and others would be violated by their acts and/or omissions.

 33. As a direct and proximate result of Defendants' acts and/or omissions as set forth
above, Plaintiffs sustained injuries and damages as set forth at paragraph 26, above.

 34. The conduct of Defendants TRAN, HALL, TAGORDA, RICHARDSON, and
DOES 1-10 entitles Plaintiffs to punitive damages and penalties allowable under 42 USC § 1983
and California law. Plaintiffs do not seek punitive damages against Defendants FRENCH in her
official capacity or against Defendant CITY.

35. Plaintiffs are also entitled to reasonable costs and attorneys' fees under 42 USC § 1988 and applicable federal and California codes and laws.

COUNT TWO

42 USC § 1983 (Monell - Municipal and Supervisory Liability)

PLAINTIFFS AGAINST DEFENDANTS CITY OF RICHMOND; RICHMOND CHIEF OF POLICE BISA FRENCH, AMRW and DOES 1-10

36. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

37. On April 27, 2008, Richmond police officers killed a mentally ill man named Alan Arce, who was having a mental health/medical crisis, again by restraint asphyxia effectuated by officers holding Mr. Arce down in a prone position with force and weight on his back until he became unresponsive. Mr. Arce's family brought a civil rights case against Richmond police officers and the City, and on information and belief, that case was settled for approximately \$250,000. (*Arce v. City of Richmond, et al.*, CAND No. C-09-01168 JCS).

38. On April 22, 2008, four Richmond police officers including now Assistant Chief of Police Louis Tirona brutally pepper sprayed, beat, kicked, and asphyxiated 26-year-old Uriah Dach, who was mentally ill and in crisis. In that incident, then-Sergeant Tirona also tased Mr. Dach for 95 out of 99 seconds, including for 72 seconds straight. Then, all four officers held Mr. Dach down in a prone position with weight on his back until he became unresponsive and died. Mr. Dach's parents were represented in a civil rights case against those officers and the City of Richmond by Plaintiffs' counsel, HADDAD & SHERWIN LLP. That case settled for \$1.5 million in 2011. (*Dach v. City of Richmond, et al.*, CAND No. C-09-00171 JSC).

39. In the *Dach* case, Sergeant James Jenkins, the Richmond Police Department's Fed. R. Civ. Proc 30(b)(6) "Person Most Knowledgeable" concerning the RPD's training and procedures relating to use of force and positional asphyxia, testified on August 24, 2011 that the Richmond Police Department, for at least the previous ten years, had been aware of the hazards of restraint-associated asphyxia, or positional asphyxia, which Mr. Jenkins defined as "because of their position, it would inhibit their ability to breathe properly which could result in death."

(Jenkins dep. 69, 70-71). Despite that, then Richmond Police Chief Christopher Magnus testified on October 3, 2011 that although he was ultimately responsible for the RPD's policies, procedures, and training, he was not familiar with the RPD's training and procedures concerning restraint asphyxia and he did not know whether the RPD had any policies concerning the issue of positional or restraint-associated asphyxia. (Magnus dep. 22, 24). In fact, the RPD had no written policy concerning positional or restraint-associated asphyxia.

40. On information and belief, despite these RPD-caused deaths by restraint asphyxia, and despite *Drummond v. City of Anaheim, supra.*, at the time of IVAN GUTZALENKO's death on March 10, 2021, Defendant RPD still had no written policy or procedure concerning the issue of positional or restraint-associated asphyxia.

41. In fact, in the year before IVAN GUTZALENKO's death, there is evidence that the RPD was attempting to cover up investigation into its officers' involvement in restraint-associated asphyxia deaths. On March 19, 2020, an emotionally disturbed man named Jose Luis Lopez Rodriguez died during prolonged prone, weighted restraint by Richmond police officers. Despite this being a clearly law-enforcement related death, the City of Richmond and Contra Costa County Sheriff's Office prevented that matter from going to a Coroner's Inquest as required by law. Jimmy Lee, a spokesman for the sheriff's office, told the San Jose Mercury News that the responsibility for that decision lies with the Richmond police: "While this case was law enforcement related, RPD declined to invoke protocol, which meant there would be no inquest into the death." Without the required Coroner's Inquest, the Sheriff-Coroner determined that that in-custody death was the result of "excited delirium," a disputed medical concept that at least three physician groups, including the American Medical Association and Physicians for Human Rights have rejected as an improper means of writing off deaths caused by police violence. (Nate Gartrell, *A Richmond man died after violent struggle with officers. Police ruled it an "excited delirium" accident without following protocol*, San Jose Mercury News, March 7, 2022, at <https://www.mercurynews.com/2022/03/06/a-richmond-man-died-after-violent-struggle-with-officers-police-ruled-it-an-excited-delirium-accident-without-following-protocol/>).

42. The unconstitutional actions and/or omissions of Defendants TRAN, HALL, TAGORDA, and DOES 1-10, and other officers employed by or acting on behalf of Defendant CITY, on information and belief, were pursuant to the following customs, practices, and/or procedures of Defendant CITY, stated in the alternative, which were directed, encouraged, allowed, and/or ratified by policymaking officials for Defendant CITY, including Defendants FRENCH and DOES 1-10:

- a. To use or tolerate the use of unlawful deadly force including permitting and training officers (i) to use deadly force when faced with less than an immediate threat of death or serious bodily injury, (ii) to use deadly force prematurely, or as a ‘first resort,’ or when facing a mere potential threat; and (iii) to use deadly force without giving a proper warning when one would be feasible;
- b. To use or tolerate the use of improper prone restraint of non-threatening individuals, increasing the risk of injury and death by restraint-associated asphyxia;
- c. To fail to follow generally accepted law enforcement procedures and standards concerning handling mentally ill and/or emotionally disturbed persons;
- d. To tolerate and/or encourage officers to unlawfully seize, detain, and arrest individuals for non-criminal behavior, including mental illness or emotional disturbance;
- e. To tolerate and/or encourage officers to fail to intervene when they should be aware that another officer is violating a person’s rights;
- f. To cover-up violations of constitutional rights by any or all of the following:
 - i. by failing to properly investigate and/or evaluate complaints or incidents of excessive and unreasonable force, unlawful seizures, and/or handling of mentally ill or emotionally disturbed persons;
 - ii. by ignoring and/or failing to properly and adequately investigate and discipline unconstitutional or unlawful police activity; and
 - iii. by allowing, tolerating, and/or encouraging police officers to: fail to file complete and accurate police reports; file false police reports; make false statements; intimidate, bias and/or “coach” witnesses to give false information and/or to attempt to bolster officers’ stories; and/or

obstruct or interfere with investigations of unconstitutional or unlawful law enforcement conduct, by withholding and/or concealing material information;

g. To allow, tolerate, and/or encourage a “code of silence” among law enforcement officers and RPD personnel, whereby an officer or member of the department does not provide adverse information against a fellow officer or member of the department;

h. To fail to have and enforce necessary, appropriate, and lawful policies, procedures, and training programs to prevent or correct the unconstitutional conduct, customs, and procedures described in this Complaint and the customs and practices described in subparagraphs (a) through (g) above, with deliberate indifference to the rights and safety of Plaintiffs and the public, and in the face of an obvious need for such policies, procedures, and training programs.

43. Defendant CITY’S training programs for its officers, including Defendants DOES 1-10 were clearly inadequate to address the obvious need for training concerning the customs and practices in the preceding paragraph that were likely to result in injuries, deaths, and serious violations of rights.

44. Defendant CITY, through its employees and agents, and through its policymaking supervisors including Defendants FRENCH and DOES 1-10, failed to properly hire, train, instruct, monitor, supervise, evaluate, investigate, and discipline Defendants DOES 1-10, and other RPD personnel, with deliberate indifference to Plaintiffs’ constitutional rights, which were thereby violated as described above.

45. During all material times, AMERICAN MEDICAL RESPONSE WEST employed Defendant RICHARDSON as a paramedic. AMRW controlled company policy, training, and disciplining of AMRW paramedics and technicians. On the date of the incident, AMRW dispatched Defendant RICHARDSON to assist the Richmond Police Department in detaining and arresting IVAN GUTZALENKO. As such, AMRW and RICHARDSON were acting in a law enforcement manner by administering Versed to IVAN GUTZALENKO as a form of chemical restraint.

1 46. AMRW failed to properly train RICHARDSON, and failed to follow an approved
2 procedure for the use of Versed, as set forth below:

- 3 a. AMRW failed to create a physician approved policy for the use of Versed.
4 During the course of the incident, Contra Costa County maintained a mere
5 outline of a flowchart for the use of Versed. However, this outline was not
6 signed and approved by a physician. Further, while the County of Contra
7 Costa maintained this flowchart, AMRW failed to create policy and training
8 around Contra Costa's recommendations for the use of versed.
- 9 b. AMRW did not properly train RICHARDSON in the proper use of Versed.
10 Per Contra Costa County's unapproved medical flowchart outline, Versed
11 should not be administered in situations where a person is calm and not
12 resisting. Further, if a person is resisting, the paramedic should re-evaluate
13 the person immediately before administering Versed. However, due to failed
14 training, or improper practice, RICHARDSON administered Versed to
15 GUTZALENKO after Gutzalenko had already been handcuffed, and while
16 GUTZALENKO was resting in a "recovery" position on his side.
17 Additionally, RICHARDSON, due to a failure to be properly trained,
18 unintentionally administered a high dose of Versed directly into
19 GUTZALENKO'S vein, instead of into GUTZALENKO'S muscle, as he
20 should have done. RICHARDSON's failure to properly aspirate the syringe
21 in part caused him to improperly administer the dose of Versed to
22 GUTZALENKO's vein.

23 47. Due to AMRW's failure to properly train their paramedics in the use of Versed,
24 AMRW paramedic RICHARDSON used excessively unreasonable force in the form of a
25 chemical restraint, that was a major contributing factor in GUTZALENKO's death. Versed
should not have been administered to GUTZALENKO while he was in handcuffs, and not
resisting in any manner. Further, the dose of Versed for an intravenous application should be no

1 more than 1-3mg per dose, with a maximum administration of 5 mg. However, RICHARDSON
2 applied the maximum administration of Versed all in one dose to GUTZALENKO's vein. This
3 was excessive, and unreasonable, in violation of GUTZALENKO's fourth and fourteenth
4 amendment rights, and was a direct result of the failed training and policies of AMRW.

5 48. The unconstitutional actions and/or omissions of Defendants DOES 1-10, as
6 described above, were approved, tolerated, and/or ratified by policymaking officers for
7 Defendant CITY and the RPD, including Defendants FRENCH and DOES 1-10. Plaintiffs are
8 informed and believe, and thereupon allege, the details of this incident have been revealed to
9 policymakers within Defendant CITY, including through videos, Defendants' statement(s),
10 physical evidence, the Coroner's Inquest, and other information and investigation, and that such
11 policymakers have direct knowledge of the fact that the seizure, uses of force, and killing of
12 IVAN GUTZALENKO were not justified, but represented an unconstitutional use of
13 unreasonable, excessive and deadly force. Notwithstanding this knowledge, on information and
14 belief, policymakers of Defendant CITY have approved of the actions and/or omissions of
15 Defendants DOES 1-10 that resulted in the death of IVAN GUTZALENKO, and have made a
16 deliberate choice to endorse the actions of those Defendants, and the bases for those actions, that
17 resulted in the death of IVAN GUTZALENKO. By so doing, policymakers of Defendant CITY
18 have shown affirmative agreement with the individual defendant officer's actions, and have
19 ratified the unconstitutional acts of Defendants DOES 1-10.

20 49. Furthermore, on information and belief, after its own administrative investigation
21 the RPD determined that the unlawful conduct of Defendants TRAN, HALL, TAGORDA,
22 RICHARDSON, and DOES 1-10, was consistent with the RPD's actual policies and procedures.
23 On information and belief, that finding was approved and ratified by policymaking supervisors
24 including Defendants FRENCH and DOES 1-10.

25 50. Furthermore, Plaintiffs are informed and believe, and thereupon allege, that
Defendants FRENCH, DOES 1-10 and other policy-making officers for Defendant CITY
including Assistant Chief of Police Louis Tirona were and are aware of a custom and pattern of

misconduct and injury caused by Defendant CITY law enforcement officers similar to the conduct of Defendants DOES 1-10 described herein, but failed to discipline culpable law enforcement officers and employees and failed to institute and enforce lawful and proper training, procedures and policy within the CITY.

51. Defendant CITY's failure to properly and adequately hire, train, instruct, monitor, supervise, evaluate, investigate, and discipline, as well as their unconstitutional customs, practices, orders, approvals, ratification and toleration of wrongful conduct of Defendants DOES 1-10, was a moving force and/or a proximate cause of the deprivations of Plaintiffs' and Decedent's clearly-established and well-settled constitutional rights in violation of 42 USC § 1983, as more fully set forth above.

52. As a direct and proximate result of the unconstitutional customs, practices, deficient training programs, actions, omissions, and deliberately indifferent supervision of Defendants CITY and FRENCH, as described above, Plaintiffs sustained serious and permanent injuries and are entitled to damages, costs and attorneys' fees as set forth in paragraphs 29-32 above.

COUNT THREE
VIOLATION OF CIVIL CODE § 52.1
PLAINTIFFS AGAINST DEFENDANTS TRAN, HALL, TAGORDA, RICHARDSON,
DOES 1-10, AMRW, AND CITY OF RICHMOND

53. Plaintiffs reallege each and every paragraph in this Complaint as if fully set forth here.

54. By their acts, omissions, customs, and policies, Defendants TRAN, HALL, TAGORDA, RICHARDSON and DOES 1-10, acting as integral participants as described above, interfered with, attempted to interfere with, and violated Plaintiffs' and Decedent's rights under California Civil Code § 52.1, and the following clearly-established rights under the United States Constitution and the California Constitution (where Decedent's rights were violated, this count is brought as a survival claim; where Plaintiffs' rights were violated, this count is brought by Plaintiffs individually):

- a. IVAN GUTZALENKO's right to be free from unreasonable searches and seizures as secured by the Fourth Amendment to the United States Constitution and California Constitution, Article 1, Section 13;
- b. IVAN GUTZALENKO's right to be free from excessive and unreasonable force in the course of a seizure, including the use of unlawful deadly force, as secured by the Fourth Amendment to the United States Constitution and California Constitution, Article 1, Section 13;
- c. IVAN GUTZALENKO's right to be free from the use of force, including deadly force, that shocks the conscience or that is used without a legitimate law enforcement purpose as secured by the Fourteenth Amendment;
- d. IVAN GUTZALENKO's and Plaintiffs' right to be free from wrongful government interference with familial relationships, and Plaintiffs' and Decedent's right to companionship and society with each other, as secured by the First and Fourteenth Amendments;
- e. IVAN GUTZALENKO's right to protection from bodily restraint, harm, or personal insult, as secured by Cal. Civil Code § 43.

55. Unlawful deadly force which violates the Fourth Amendment with reckless disregard for rights violates the Bane Act.¹ Defendants' reckless use of unlawful deadly force against IVAN GUTZALENKO in and of itself constitutes threat, intimidation, or coercion. Additionally, separate from, and above and beyond, Defendants' attempted interference, interference with, and violation of Plaintiffs' and IVAN GUTZALENKO's rights, Defendants violated Plaintiffs' and IVAN GUTZALENKO's rights by the following conduct constituting threat, intimidation, or coercion:

- a. Threatening IVAN GUTZALENKO in the absence of any threat presented by IVAN GUTZALENKO, or any justification whatsoever;
- b. Using deliberately reckless and provocative tactics to apprehend IVAN GUTZALENKO in violation of generally accepted law enforcement training and standards, and in violation of IVAN GUTZALENKO's rights;

¹ See *Cornell v. City and County of San Francisco*, 17 Cal.App.5th 766 (2017) (review denied); *Reese v. County of Sacramento*, 888 F.3d 1030, 1043-44 (9th Cir. 2018); *Rodriguez v. County of L.A.*, 891 F.3d 776, 802 (9th Cir. 2018); *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1105-06 (9th Cir. 2014) (citing *Cameron v. Craig*, 713 F.3d 1012, 1022 (9th Cir. 2013)).

- c. Causing IVAN GUTZALENKO to be asphyxiated, without warning and without justification;
- d. Causing the use of conscience-shocking force against IVAN GUTZALENKO, without a legitimate law enforcement purpose, thereby violating his and Plaintiffs' rights to familial association;
- e. Threatening violence against IVAN GUTZALENKO, with the apparent ability to carry out such threats, in violation of Civ. Code § 52.1(j);
- f. Causing and permitting the infliction of repeated and sustained applications of unnecessary force on IVAN GUTZALENKO, by multiple officers, using force that was severe and/or deadly, over several minutes;
- g. Violating IVAN GUTZALENKO's rights to be free from unlawful seizures by both wrongful arrest and excessive force.
- h. Using chemical restraints against IVAN GUTZALENKO while GUTZALENKO showed no signs of resistance, and without proper authority to do so.

56. The threat, intimidation, and coercion described herein were not necessary or inherent to any legitimate and lawful law enforcement activity.

57. Further, the violations of duties and rights by Defendants TRAN, HALL, TAGORDA, RICHARDSON, and DOES 1-10, and coercive conduct described herein, were volitional acts; none was accidental or merely negligent.

58. Defendant CITY is vicariously liable for the conduct of its employees and agents described in this Count, pursuant to California Government Code § 815.2.

59. As a direct and proximate result of Defendants' violation of California Civil Code § 52.1 and of Plaintiffs' and Decedent's rights under the United States and California Constitutions, Plaintiffs (individually and for Decedent) sustained injuries and damages, and against each and every Defendant is entitled to relief as set forth above at paragraphs 29-32, including punitive damages against Defendants TRAN, HALL, TAGORDA, RICHARDSON, and DOES 1-10, and including all damages and penalties allowed by California Civil Code §§ 52, 52.1 and California law, not limited to costs, attorneys' fees, three times actual damages, and civil penalties. Plaintiffs do not seek punitive damages against Defendant CITY.

COUNT FOUR
NEGLIGENCE; PERSONAL INJURIES
PLAINTIFFS AGAINST ALL DEFENDANTS

60. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

61. At all times, Defendants TRAN, HALL, TAGORDA, and DOES 1-10 owed Plaintiffs and Decedent the duty to act with due care in the execution and enforcement of any right, law, or legal obligation.

62. At all times, Defendants TRAN, HALL, TAGORDA, RICHARDSON, and DOES 1-10 owed Plaintiffs and Decedent the duty to act with reasonable care.

63. These general duties of reasonable and due care owed to Plaintiffs and Decedent by Defendants TRAN, HALL, TAGORDA, RICHARDSON, and DOES 1-10 include but are not limited to the following specific obligations:

- a. to refrain from unlawfully seizing, detaining, and/or arresting IVAN GUTZALENKO;
- b. to refrain from using excessive and/or unreasonable force against IVAN GUTZALENKO;
- c. to refrain from unreasonably creating and escalating the situation where force, including but not limited to deadly force, was used;
- d. to refrain from using unreasonable tactics that escalated the situation, created perceived danger, and led to the use of deadly force;
- e. to refrain from abusing their authority granted them by law;
- f. to refrain from violating Plaintiffs' rights guaranteed by the United States and California Constitutions, as set forth above, and as otherwise protected by law.

64. Additionally, these general duties of reasonable care and due care owed to Plaintiffs by Defendants FRENCH and DOES 1-10, include but are not limited to the following specific obligations:

- a. to properly and adequately hire, investigate, train, supervise, monitor, evaluate, and discipline RPD officers under their supervision (including

DOES 1-10) to ensure that those employees/agents/officers act at all times in the public interest and in conformance with law;

- b. to make, enforce, and at all times act in conformance with policies, training, and customs that are lawful, consistent with generally accepted law enforcement standards, and protective of individual rights, including Plaintiffs' and Decedent's rights;
- c. After being informed of officers' conduct causing Decedent's death in this situation, to take proper action to discipline and/or retrain involved officers, and to not ratify such officers' misconduct and violations of generally accepted standards and law;
- d. to refrain from making, enforcing, and/or tolerating the wrongful practices, customs, and deficient training programs set forth in COUNT TWO, above.

65. Defendants, through their acts and omissions, breached each and every one of the aforementioned duties owed to Plaintiffs.

66. Defendant CITY is vicariously liable for the conduct of its employees and agents described in this Count, pursuant to California Government Code § 815.2.

67. As a direct and proximate result of Defendants' negligence, Plaintiffs and Decedent sustained injuries and damages, and against each and every Defendant are entitled to relief as set forth above at paragraphs 29-31, including punitive damages against Defendants TRAN, HALL, TAGORDA, RICHARDSON, and DOES 1-10. Plaintiffs do not seek punitive damages against Defendant CITY or Defendant FRENCH in her official capacity.

COUNT FIVE
ASSAULT AND BATTERY
PLAINTIFFS AGAINST DEFENDANTS TRAN, HALL, TAGORDA, RICHARDSON,
DOES 1-10 AND CITY OF RICHMOND

68. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

69. The actions and omissions of Defendants TRAN, HALL, TAGORDA, RICHARDSON, and DOES 1-10 as set forth above constitute assault and battery.

70. Defendant CITY is vicariously liable for the conduct of its employees and agents described in this Count, pursuant to California Government Code § 815.2.

71. As a direct and proximate result of the assault and battery of by Defendants TRAN, HALL, TAGORDA, RICHARDSON, and DOES 1-10, Plaintiffs sustained injuries and damages, and are entitled to relief as set forth above at paragraphs 29-31, including punitive damages against Defendants TRAN, HALL, TAGORDA, RICHARDSON, and DOES 1-10. Plaintiffs do not seek punitive damages against Defendant CITY.

COUNT SIX
FALSE ARREST AND IMPRISONMENT
PLAINTIFF AGAINST DEFENDANTS TRAN, HALL, TAGORDA, RICHARDSON,
DOES 1-10, AMRW, AND CITY OF RICHMOND

72. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

73. At no time during the events described above, and at all other pertinent times, did Defendants TRAN, HALL, TAGORDA, RICHARDSON, or DOES 1-10 have a warrant for the arrest of IVAN GUTZALENKO, nor did Defendants have any facts or information that constituted probable cause that IVAN GUTZALENKO had committed or was about to commit a crime. Defendants also lacked reasonable suspicion to detain IVAN GUTZALENKO once confirming that he had not stolen anything from nearby stores, and Defendants were not engaged in any lawful investigative detention of IVAN GUTZALENKO.

74. Defendants, and each of them, intentionally and unlawfully exercised force to restrain, detain, and confine IVAN GUTZALENKO, putting restraint on IVAN GUTZALENKO's freedom of movement, and compelled IVAN GUTZALENKO to remain and/or move against his will. Defendants authorized, directed, and assisted in procuring, without process, IVAN GUTZALENKO's unlawful arrest and imprisonment.

75. Defendant CITY is vicariously liable for the conduct of its employees and agents described in this Count, pursuant to California Government Code § 815.2.

76. As a direct and proximate result of IVAN GUTZALENKO’S unlawful arrest and imprisonment by Defendants TRAN, HALL, TAGORDA, RICHARDSON, and DOES 1-10, Plaintiffs sustained injuries and damages, and are entitled to relief as set forth above at paragraphs 29-31, including punitive damages against Defendants TRAN, HALL, TAGORDA, RICHARDSON, and DOES 1–10. Plaintiffs do not seek punitive damages against Defendant CITY.

WHEREFORE, Plaintiffs respectfully request the following relief against each and every Defendant herein, jointly, and severally:

- a. Declaratory relief, finding that Defendants violated Plaintiffs’ and Decedent’s rights, to serve the purposes of 42 U.S.C. § 1983, Cal. Code of Civ. Proc. § 1021.5, and Cal. Civil Code §§ 52 and 52.1, including for vindication of Constitutional and other rights as “Private Attorney General,” elucidation of those rights for the courts, the public, and government officials, and to deter similar wronging by the Defendants and other officials;
- b. compensatory and exemplary damages in an amount according to proof and which is fair, just, and reasonable;
- c. punitive damages under 42 USC § 1983 and California law in an amount according to proof and which is fair, just, and reasonable (punitive damages are not sought against Defendants CITY or FRENCH in his official capacity);
- d. all other damages, penalties, costs, interest, and attorneys’ fees as allowed by 42 USC §§ 1983, 1988, Cal. Code of Civ. Proc. §§ 377.20 et seq., 377.60 et seq., and 1021.5, Cal. Civil Code §§ 52 et seq., 52.1, and as otherwise may be allowed by California and/or federal law;
- e. Injunctive relief, including but not limited to the following:
 - i. an order prohibiting Defendants from engaging in the unconstitutional or unlawful customs, policies, practices, procedures, training, and supervision as may be determined and/or adjudged by this case;
 - ii. an order requiring Defendants to institute and enforce appropriate and lawful policies and procedures for the use of restraints and deadly force;

- iii. an order prohibiting Defendants and their police officers from engaging in a “code of silence” as may be supported by the evidence in this case;
- iv. an order requiring Defendants to train all RPD officers concerning generally accepted and proper tactics and procedures and this Court’s orders concerning the issues raised in Count 2 and injunctive relief requests i-iii, above;

f. such other and further relief as this Court may deem appropriate.

JURY DEMAND

Plaintiffs hereby demand a jury trial in this action.

PRAYER

WHEREFORE, Plaintiffs pray for relief, as follows:

1. For general damages according to proof;
2. For special damages, including but not limited to, past, present and/or future wage loss, income and support, medical expenses, and other special damages in a sum to be determined according to proof;
3. For punitive damages and exemplary damages in amounts to be determined according to proof as to defendants CITY AND COUNTY OF SAN FRANCISCO, and DOES 1-50 and/or each of them;
4. Any and all permissible statutory damages;
5. For reasonable attorney’s fees pursuant to 42 U.S.C. §1988;
6. For cost of suit herein incurred; and
7. For such other and further relief as the Court deems just and proper.

Dated: August 9, 2023

BURRIS, NISENBAUM, CURRY & LACY, LLP

/s/ John L. Burris

John L. Burris

Benjamin Nisenbaum

James Cook
Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT 2

DEPOSITION OF OFFICER TOM TRAN - VIDEOCONFERENCE

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

--o0o--

IVAN GUTZALENKO, Deceased,)
through his Co-Successors)
in Interest, N.G. and N.I.G,))
minors through their mother)
and Next Friend, Honey)
Gutzalenko, individually)
and as Co-successors in)
Interest for IVAN)
GUTZALENKO, Deceased,)

CERTIFIED COPY

CASE NO.: 3:22-cv-02130-EMC

Plaintiffs,)

vs.)

CITY OF RICHMOND, et al.,)

Defendants.)

VIDEOCONFERENCE DEPOSITION OF

OFFICER TOM TRAN

THURSDAY, SEPTEMBER 5, 2024

1:46 P.M. - 3:31 P.M.

REPORTED BY: Liliana Rodriguez, CSR No. 13783

DEPOSITION OF OFFICER TOM TRAN - VIDEOCONFERENCE

INDEX OF EXAMINATION

WITNESS: OFFICER TOM TRAN

EXAMINATION	PAGE
By Mr. Nisenbaum	6, 73
By Mr. Kanter	69
By Mr. Fine	70
By Mr. Cook	75

--o0o--

Appearance Page	3
Exhibit Page	4
Location	5
Declaration Under Penalty of Perjury	79
Reporter's Certificate	80
Disposition	81
Witness Letter	82
Deposition Errata Sheet	83
Attorney's Notes	84

--o0o--

1 REMOTE APPEARANCES

2
3 For Plaintiffs:

4 LAW OFFICES OF JOHN L. BURRIS
5 BY: BEN NISENBAUM, ATTORNEY AT LAW
6 JAMES COOK, ATTORNEY AT LAW
7 Airport Corporate Center
8 7677 Oakport Street, Suite 1120
9 Oakland, California 94621
10 (510) 839-5200
11 Ben.Nisenbaum@johnburrislaw.com
12

13
14 For Defendants:

15 ORBACH HUFF & HENDERSON LLP
16 NICHOLAS FINE, ATTORNEY AT LAW
17 6200 Stoneridge Mall Road, Suite 225
18 Pleasanton, California 94588
19 510.999.7908
20 Nfine@ohhlegal.com
21

22
23 For Defendants:

24 HINSHAW, MARSH, STILL & HINSHAW, LLP
25 SCOTT R. KANTER, ATTORNEY AT LAW
12901 Saratoga Avenue
Saratoga, California 95070
408.861.6500
Skanter@hinshaw-law.com

Also Present:

Crystal Mackey,
Law Offices of John L. Burris

--o0o--

DEPOSITION OF OFFICER TOM TRAN - VIDEOCONFERENCE

INDEX TO EXHIBITS

WITNESS: OFFICER TOM TRAN

MARKED	DESCRIPTION	PAGE
--------	-------------	------

(NONE MARKED)

--o0o--

DEPOSITION OF OFFICER TOM TRAN - VIDEOCONFERENCE

1 Zoom videoconference deposition of
2 OFFICER TOM TRAN,
3 taken on behalf of Plaintiffs, beginning at 1:46 p.m.
4 and ending at 3:31 p.m. on Thursday, September 5, 2024,
5 before Liliana Rodriguez, Certified Shorthand Reporter
6 No. 13783

7
8 --o0o--
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OF OFFICER TOM TRAN - VIDEOCONFERENCE

1 REPORTED REMOTELY FROM FRESNO COUNTY, CALIFORNIA;

2 THURSDAY, SEPTEMBER 5, 2024, 1:46 P.M.

3 -oOo-

4 OFFICER TOM TRAN,

5 having been first duly sworn,

6 testified as follows:

7 EXAMINATION

8 BY MR. NISENBAUM:

9 Q. Can you state and spell your name, please.

10 A. First name Tom, T-O-M. Last name is Tran,
11 T-R-A-N.

12 Q. Okay. You were present during the previous
13 deposition, correct?

14 A. I don't recall. Like, the last deposition?

15 Q. Yes. The one we just did this morning.

16 A. Oh, yeah. Yes, I was.

17 Q. Okay. And you heard the admonitions that I gave
18 the officer upfront, correct?

19 A. Correct.

20 Q. Okay. Do I need to go over that with you as
21 well?

22 A. Summary, just be honest and truthful from what I
23 recollect.

24 Q. Okay. Just real quick, when did you attend the
25 police academy?

DEPOSITION OF OFFICER TOM TRAN - VIDEOCONFERENCE

1 A. 2019.

2 Q. Okay. How many times have you testified in
3 court?

4 A. Multitude of times.

5 Q. Multitude being 10 times, 20 times?

6 A. Over 20.

7 Q. Okay. You received training in providing
8 courtroom testimony at the police academy, correct?

9 A. Correct.

10 Q. Okay. All right. And again, if you make changes
11 to your deposition that are substantive in nature, that
12 can and will be held against you.

13 Do you understand?

14 A. Yes, sir.

15 Q. Okay. When you gave your interview following
16 this incident, were you truthful?

17 A. Absolutely.

18 MR. FINE: Vague as to interview.

19 BY MR. NISENBAUM:

20 Q. You were interviewed after this incident by
21 Contra Costa County DA, correct?

22 A. Yes.

23 Q. In that interview were you truthful?

24 A. Yes.

25 Q. Have you reviewed that interview prior in

1 preparation for today's deposition?

2 A. Yes.

3 Q. Did you listen to it or read the transcript?

4 A. I read it.

5 Q. Okay. Did you notice anything that was
6 inaccurate in it?

7 A. Not to my recollection.

8 Q. Okay. Was there anything where you realized that
9 an answer you gave was incorrect?

10 A. No.

11 Q. Okay. All right. I went over the training
12 regarding avoiding asphyxiation during restraint.
13 Obviously you haven't been an officer nearly as long as
14 Officer Hall, but I'm sure you've had that training too,
15 correct?

16 A. Correct.

17 MR. FINE: Vague and ambiguous.

18 BY MR. NISENBAUM:

19 Q. The training I'm referring to is training that
20 says that when a person is prone during a restraint, he
21 should avoid -- if it's reasonable under the
22 circumstances, he should avoid putting weight on their
23 back for an extended period of time.

24 MR. FINE: Vague and ambiguous. Calls for
25 speculation.

1 BY MR. NISENBAUM:

2 Q. Have you had that training?

3 MR. FINE: Same objection.

4 THE WITNESS: During the academy they did state
5 that we are not to put significant force on anybody's
6 torso or back that would obstruct their breathing.

7 BY MR. NISENBAUM:

8 Q. Okay. And did you have an understanding as to
9 why that is the case?

10 A. Yes.

11 Q. What is your understanding?

12 A. To prevent from obstructing their breathing
13 capabilities.

14 Q. Because that can be deadly. People die from
15 that. Do you understand that?

16 A. Yes.

17 Q. Okay. In particular -- well, let me ask you
18 this: How well do you recall this incident?

19 A. Just based off memory, partial. With the AVR
20 cameras I was assisted with recalling more things but
21 not everything.

22 Q. What else did you review? You reviewed your
23 interview. What else did you review to prepare for
24 deposition?

25 A. Coroner's inquest, the county interview and the

1 body-worn camera.

2 Q. Okay. Just yours or others?

3 A. Just mine.

4 Q. I'm going to skip past a lot of kind basics since
5 you were here at the last deposition, but you were --
6 you were responding to a call in which a person who was
7 later identified as Ivan Gutzalenko was potentially
8 shoplifting at a gas station and subsequently was
9 potentially vandalizing a store; is that right?

10 A. Correct.

11 Q. Okay. There was no report that anyone had been
12 threatened in any of those incidents, correct?

13 MR. FINE: Vague.

14 THE WITNESS: Not to my knowledge.

15 BY MR. NISENBAUM:

16 Q. Right. Okay. And how long after you got the
17 call did it take you before you actually saw
18 Mr. Gutzalenko?

19 A. I don't really recall, but I was not that far
20 from where the incident occurred, so I think several
21 minutes, but I'm not exactly sure.

22 Q. And you were the first officer to encounter him,
23 correct?

24 A. I'm sorry, can you restate that again?

25 Q. You were the first officer to encounter

1 Mr. Gutzalenko?

2 A. Yes, sir.

3 Q. Okay. And when you encountered Mr. Gutzalenko,
4 is it fair to say that he did not appear to be all there
5 mentally?

6 MR. FINE: Vague.

7 THE WITNESS: I wouldn't say exactly that.

8 BY MR. NISENBAUM:

9 Q. What would you say?

10 A. I noticed that his health was not of a normal and
11 healthy person. I know that his face was blueish
12 purple.

13 Q. Right.

14 A. The bridge of his nose was cut. There was a
15 bruise -- a rather large, fairly large bruise in the
16 middle of his head, cuts bleeding and stumbling, dilated
17 eyes. Just from the dilated eyes I suspected that it
18 could be some influence of a controlled substance.

19 Q. Okay. When I said not all there, I mean it
20 appeared -- so he appeared physically injured and having
21 some difficulty physically; is that right?

22 A. Yes, sir.

23 Q. Okay. And how was his mentality? Were you able
24 to ascertain that at some point in time?

25 MR. FINE: Vague as to mentality.

1 BY MR. NISENBAUM:

2 Q. Was he oriented to time and place, for example?
3 Did he appear to be?

4 MR. FINE: Lacks foundation.

5 THE WITNESS: Altered state of being.

6 BY MR. NISENBAUM:

7 Q. Okay. Did it appear to you that he was
8 intoxicated?

9 A. Of some sort.

10 Q. Okay. It appeared -- did it appear to you that
11 he was capable of caring for himself?

12 A. No.

13 Q. Can you explain why not?

14 A. Just from earlier statement, some of the
15 conditions did not point towards someone that was
16 healthy. It was based off the stumbling, injuries,
17 discolored face, and at one point he tried walking
18 into -- I don't know if he tried but he stumbled towards
19 the roadway, and I had to step into the road to kind of
20 cut him off if he had walked into the roadway. Just
21 some of those things right there led me to believe that
22 he was not in a state to take care of himself.

23 Q. And of course people can be arrested for public
24 intoxication, right?

25 A. Correct.

1 Q. And that's when you're intoxicated to the point
2 where you can't care for yourself, right?

3 A. Correct.

4 Q. Okay. And 5150s can be issued when a person
5 meets one of three -- essentially three criteria, either
6 danger to one's self, danger to others or unable to care
7 for themselves all by way of some sort of mental health
8 emergency, right?

9 A. Yes.

10 Q. Okay. At some point in time were you involved in
11 attempting to make an assessment of a 5150 on
12 Mr. Gutzalenko?

13 A. Yes. But limited.

14 Q. What do you mean by limited?

15 A. I wasn't able to go through the full process,
16 things were going through my mind considering it.

17 Q. Well, you were considering it and you're not the
18 only one. Other officers were saying 5150 or at least
19 5-1-5-0 at the scene, right?

20 A. Are you saying that other people recommended it
21 as well?

22 Q. Officers, yes.

23 A. Correct.

24 Q. Okay. And ultimately Mr. Gutzalenko was not
25 actually 5150'd because he died, right?

1 A. Correct.

2 Q. Okay. All right. We've talked -- you heard me
3 ask about the training regarding de-escalation. Have
4 you had similar trainings as Officer Hall in
5 de-escalation?

6 MR. FINE: Vague and ambiguous as to similar
7 trainings.

8 THE WITNESS: Similar trainings, yes.

9 BY MR. NISENBAUM:

10 Q. Okay. And you understand the concept that when
11 you're dealing with a person who presents as being
12 mentally impaired, emotionally disturbed, having a
13 mental health emergency, that if the circumstances allow
14 for it, you should try to slow the incident down and
15 employ de-escalation tactics, correct?

16 MR. FINE: Incomplete hypothetical. Calls for
17 speculation.

18 THE WITNESS: Yes.

19 BY MR. NISENBAUM:

20 Q. Okay. And in this situation you did try to talk
21 to Mr. Gutzalenko, correct?

22 A. Yes.

23 Q. You tried to ask him what was wrong and what he
24 had taken, right?

25 A. Yes.

1 Q. And you were asking him what he had taken in part
2 to determine not only whether he was intoxicated but if
3 potentially he was overdosing or something, right?

4 A. That was a thought, yes.

5 Q. Okay. And I know someone talked about Narcan.
6 Ultimately that, to your knowledge based on your
7 training, that's applicable when an opiate is at issue
8 but not effective for stimulant drugs like meth or
9 cocaine. Is that your training?

10 MR. FINE: Calls for speculation. Calls for
11 expert opinion.

12 THE WITNESS: I know from my training experience,
13 opiates, yes. But with meth, I mean, I'm not sure if it
14 was like full meth or it was diluted with something else
15 but Narcan has also helped with that.

16 BY MR. NISENBAUM:

17 Q. Oh, it can? Okay. I didn't know that.

18 Well, let's just cut to the chase. I'm going to
19 share Officer Tagorda's video, and I'm going to ask you
20 questions.

21 A. Yes, sir.

22 Q. So -- and I know that you've already encountered
23 him. Before I start asking you these questions let me
24 ask you this: When -- Mr. Gutzalenko, he initially told
25 you that he was having breathing difficulties when you

1 first encountered him, correct?

2 A. Yes.

3 Q. Okay. And he had a blueish tint to his face?

4 A. Yes.

5 Q. And is that something that you've been trained is
6 consistent with a person who is having breathing
7 difficulties?

8 MR. FINE: Calls for speculation. Incomplete
9 hypothetical.

10 BY MR. NISENBAUM:

11 Q. Based on your training.

12 MR. FINE: Same objections.

13 THE WITNESS: Yes.

14 BY MR. NISENBAUM:

15 Q. Okay. It indicates a lack of oxygen, right?

16 MR. FINE: Same objections.

17 THE WITNESS: It could indicate a multitude of
18 things but yes, sir, generally.

19 BY MR. NISENBAUM:

20 Q. All right. Now let me ask you, next question:
21 During the restraint of Mr. Gutzalenko, what steps did
22 you take to make sure that your knee did not apply
23 pressure to his back in a manner that would interfere
24 with his breathing? What did you do to prevent that
25 from happening?

1 A. Several things, sir. I guess from sequential
2 order, placed down my right knee, balanced my weight
3 between my right knee and the ball of my left foot. I
4 also posted both of my hands on Mr. Gutzalenko, and at
5 some periodical points it shifted from his shoulders to
6 his hands to my hands on the ground or split between
7 Mr. Gutzalenko and my hands on the floor at the same
8 time. But at all times I balanced my weight off from
9 him. I did not place any significant pressure or
10 contact on him.

11 Q. Okay. I know there was a reference to you
12 sprawling in your interview. You were a wrestler?

13 A. No, sir.

14 Q. Okay. Was that just a term that you associated
15 with wrestling?

16 A. With martial arts.

17 Q. Martial arts. Do you do MMA?

18 MR. FINE: Objection. Relevance.

19 THE WITNESS: Used to.

20 BY MR. NISENBAUM:

21 Q. What -- and what did you do? Muay Thai?

22 MR. FINE: Same objection.

23 THE WITNESS: Several arts, sir.

24 BY MR. NISENBAUM:

25 Q. What were they?

1 MR. FINE: Same objection.

2 THE WITNESS: Muay Thai would be one of them.
3 Sanda Sanshou, Brazilian and Japanese jiu-jitsu, Japanese
4 judo and some -- very lightly in Hapkido and Aikido.

5 BY MR. NISENBAUM:

6 Q. Did you do any of this professionally?

7 A. No, sir.

8 MR. FINE: Vague.

9 BY MR. NISENBAUM:

10 Q. Okay. And when did you practice mixed martial
11 arts?

12 A. When you say practice, does that mean academy
13 study as well?

14 Q. Sure.

15 A. At a young age, sir. Maybe about six or seven.

16 Q. That's when you started?

17 A. Actually studying, yes.

18 Q. Okay. And how about physically doing?

19 MR. FINE: Same objection.

20 Go ahead.

21 THE WITNESS: Eight, nine or ten. At a young age
22 is all I recall.

23 BY MR. NISENBAUM:

24 Q. Until what age did you practice mixed martial
25 arts?

DEPOSITION OF OFFICER TOM TRAN - VIDEOCONFERENCE

1 MR. FINE: Same objections.

2 THE WITNESS: Fifteen or sixteen.

3 BY MR. NISENBAUM:

4 Q. Until you were 15 or 16 years old?

5 A. Yes.

6 Q. How old are you now?

7 A. Twenty-nine, sir.

8 Q. Okay. And you -- have you trained in mixed
9 martial arts since you were 16?

10 MR. FINE: Vague as to trained.

11 THE WITNESS: I have studied it and physically
12 practiced it, sir.

13 BY MR. NISENBAUM:

14 Q. Since age 16?

15 MR. FINE: Same objection.

16 THE WITNESS: Relatively, sir.

17 BY MR. NISENBAUM:

18 Q. I mean, from age 16 to the present have you
19 continued studying and practicing mixed martial arts?

20 A. Yes, sir.

21 Q. Okay. And is it the same mixed martial arts that
22 you identified?

23 A. Could you repeat that?

24 Q. Is it the same types of mixed martial arts that
25 you previously identified Muay Thai, Brazilian

1 something, Japanese judo?

2 A. In regards to my background with martial arts?

3 Q. I mean since age 16 up to current, what have you
4 been studying and practicing with regard to mixed
5 martial arts. What types?

6 A. Just mixed martial arts in general.

7 Q. Which different types?

8 A. Mixed martial arts.

9 Q. I get it but is that -- is mixed --

10 A. That is the style.

11 Q. I see.

12 A. Yes, sir.

13 Q. There's not a substyle, for example, obviously
14 Muay Thai is a martial art, Brazilian whatever is a
15 martial art, Japanese judo is a martial art. So you're
16 saying that since age 16 you studied a kind of
17 conglomeration of all types of martial arts?

18 MR. FINE: Misstates testimony.

19 THE WITNESS: Mixed martial arts is the same
20 style separate from everything else.

21 BY MR. NISENBAUM:

22 Q. Okay. So tell me about mixed martial arts. What
23 is that style?

24 MR. FINE: Relevance.

25 THE WITNESS: In a nutshell, nitpicks of every

1 different style and mixes it together so it's not
2 strictly a ground, stand up, grappling, et cetera.

3 BY MR. NISENBAUM:

4 Q. Have you ever done any of it professionally?

5 MR. FINE: Vague as to professionally.

6 BY MR. NISENBAUM:

7 Q. Where you get paid.

8 MR. FINE: Same objection.

9 THE WITNESS: No, sir.

10 BY MR. NISENBAUM:

11 Q. Okay. Have you participated in competitions in
12 mixed martial arts?

13 A. Yes, sir.

14 Q. Okay. When was the last time you participated in
15 a mixed martial arts competition?

16 A. Maybe high school, college.

17 Q. Okay. And I would say that's a while back, but
18 it seems like you are fairly young. How old are you?

19 MR. FINE: Asked and answered.

20 BY MR. NISENBAUM:

21 Q. Twenty-nine years old. So you're 29, so that was
22 about seven years ago would have been when you last did
23 it?

24 A. Sounds about right, sir.

25 Q. Okay. And were you good? Did you, like, win

1 competitions?

2 MR. FINE: Compound. Vague and ambiguous.

3 THE WITNESS: I would personally say that I was.

4 BY MR. NISENBAUM:

5 Q. So did you win competitions?

6 A. Yes.

7 Q. What weight class?

8 A. Really changed but I'm not that tall, so
9 competing at --

10 THE REPORTER: I'm sorry, I'm having a really
11 hard time understanding him. It sounds very muffled.

12 (Off-the-record discussion.)

13 BY MR. NISENBAUM:

14 Q. What was your height and weight? What is your
15 height and weight?

16 A. 5-7, 220 as of today.

17 Q. And how about at the time of this incident?

18 A. 5-7, 200.

19 Q. And is the weight gain, is it a fat/muscle
20 combination?

21 MR. FINE: Calls for speculation.

22 MR. NISENBAUM: He knows.

23 THE WITNESS: I sincerely don't know.

24 BY MR. NISENBAUM:

25 Q. Come on.

1 A. Combination, I believe.

2 Q. You've been working out and you've been eating
3 like crap; is that right? When you say it's a
4 combination?

5 MR. FINE: Calls for speculation. Vague and
6 ambiguous. It's also just generally not always true
7 that's the case. Go ahead.

8 MR. NISENBAUM: It's 99 percent true. It's true
9 for me.

10 THE WITNESS: I don't know.

11 BY MR. NISENBAUM:

12 Q. Okay. Fair enough.

13 At the time of this incident, did you have any
14 injuries that -- whether chronic injuries or acute
15 injuries that would have affected your performance in
16 the field?

17 A. No, sir.

18 Q. And did you have -- do you have any issues with
19 your memory?

20 A. Not to my recollection, sir.

21 Q. So you've seen the video, I played it, and I
22 think that is the best view of your knee, and it looks
23 like for a good period of time it is dead in the center
24 of Mr. Gutzalenko's back. Why is that?

25 MR. FINE: Misstates the video. Assumes facts.

1 THE WITNESS: Upon review of the AVR footage that
2 you showed me of Officer Tagorda's body-worn camera it
3 showed that my left knee made contact with
4 Mr. Gutzalenko's back or torso and upper right shoulder.
5 I will admit at some points of the video my right knee
6 has made contact or did make contact with
7 Mr. Gutzalenko's middle of the back, but I definitely
8 did not place significant force on his back or torso to
9 where it could have obstructed his breathing.

10 BY MR. NISENBAUM:

11 Q. How do we know? How do you know that?

12 A. Because I did not place significant force on the
13 middle of his back.

14 Q. So earlier you heard the discussion from Officer
15 Hall where he said that because your right knee was on
16 the ground while you're left knee or left lower leg,
17 some part of your left leg, knee and/or shin, was
18 against Mr. Gutzalenko's back, he said in his view that
19 wasn't significant pressure being applied because you
20 had weight that would have been on the ground on your
21 right knee. But then at a certain point it changed.
22 You picked your -- your right knee up off the ground.
23 You had that right leg stretched out and it looks like
24 you're leveraging your weight onto your left -- onto
25 your left knee ultimately into the middle of his back.

1 That's what it looks like on the video. Why did you do
2 that?

3 MR. FINE: Misstates the video.

4 THE WITNESS: That's incorrect, sir. I did not
5 lift up my right knee and place all of my force or
6 weight onto my left knee onto Mr. Gutzalenko's body. If
7 you look at my left ball of my foot you could see that
8 the pressure is majority there and also distributed
9 across both posted hands that I've place on the ground
10 and/or Mr. Gutzalenko away from his torso.

11 Q. The balls of your feet are pressing against the
12 ground. That indicates that all the force is going that
13 direction away from you into him. That's what that
14 shows when you have your -- when you're up on the balls
15 of your feet, that's leveraging your weight forward.
16 You understand that, right?

17 MR. FINE: Calls for speculation. Calls for
18 expert opinion. Misstates the video.

19 BY MR. NISENBAUM:

20 Q. When you're pushing against something and you get
21 on balls of your toes, that is in order to leverage your
22 weight even more in that direction. You know that,
23 right?

24 MR. FINE: Same objections. Misstates the video.
25 Calls for speculation. Calls for expert opinion.

1 MR. NISENBAUM: I mean, try to push -- try to
2 push a car flat footed. You can't do it flat footed.
3 You have to get up on the balls of your toes to do it.
4 You know this. I'm sure.

5 MR. FINE: Same objections. Relevance.

6 BY MR. NISENBAUM:

7 Q. Do you know that?

8 MR. FINE: Same objections.

9 THE WITNESS: You can push something flat foot.
10 I have done it.

11 BY MR. NISENBAUM:

12 Q. You can but it's very hard. It's a lot easier if
13 you get on the balls of your feet, right?

14 MR. FINE: Same objections.

15 THE WITNESS: I would agree if you get on the
16 balls of your foot to push something --

17 BY MR. NISENBAUM:

18 Q. It's easier to push when you're on the balls of
19 your feet because it creates more leverage in the
20 direction that you're pushing, correct?

21 MR. FINE: Same objections.

22 MR. TRAN: Not necessarily, sir.

23 BY MR. NISENBAUM:

24 Q. How is it incorrect? When you say "not
25 necessarily," how is that possibly incorrect? Give me

1 an example.

2 A. I could stand on the ball of my foot without
3 having to push on anything.

4 Q. Okay. You mean like a ballerina?

5 MR. FINE: Argumentative. Vague and ambiguous.

6 BY MR. NISENBAUM:

7 Q. Sure. If you're just standing still, but if you
8 are pushing on something and you're on the balls of your
9 feet, you would agree that creates -- getting on the
10 balls of your feet creates more leverage than if you
11 were flat footed, correct?

12 MR. FINE: Incomplete hypothetical. Vague and
13 ambiguous. Calls for speculation.

14 BY MR. NISENBAUM:

15 Q. In everyone's experience?

16 MR. FINE: Same objections.

17 THE WITNESS: I would disagree still, sir.

18 BY MR. NISENBAUM:

19 Q. Why?

20 A. In specific, when watching the video and from my
21 recollection, I was on the ball of my left foot, and
22 because I was on the ball of my left foot, majority of
23 my weight was on -- I was posted on my left ball of my
24 foot. Yes, my knee did obstruct Mr. Gutzalenko's
25 ability to roll backwards for multiple reasons. I

1 didn't want him to get back up to place himself in
2 danger, I didn't want him to roll onto his back to where
3 his health could be put at risk additionally such as
4 vomiting, and at some point he was expelling some blood
5 from his mouth, and I didn't want that -- him to choke
6 on that. But just because I was on the ball of my foot
7 does not mean that I was putting pressure on him.

8 Q. Okay. Let me actually go to your video. I'm
9 going to start this at 11:20 or 11:22 on the screen.

10 Is it sharing my screen yet or no?

11 MR. FINE: Not yet. There we go.

12 BY MR. NISENBAUM:

13 Q. So this is at 11:22. I'm going to pause and ask
14 you some questions. You saw how I do that, right?

15 A. Yes, sir.

16 Q. Okay. Playing at 11:22, which is the 18:51:04
17 Axon time stamp.

18 Okay. This is -- we're paused at 11:44. The
19 Axon time stamp is 18:51:26. That's your knee, correct?

20 MR. FINE: Calls for speculation.

21 THE WITNESS: I believe so, sir.

22 BY MR. NISENBAUM:

23 Q. You believe so. Okay. And where would you
24 describe your knee being positioned relative to
25 Mr. Gutzalenko's back?

1 A. Lower right hip.

2 Q. That's the hip?

3 MR. FINE: Asked and answered.

4 BY MR. NISENBAUM:

5 Q. The hip is down here. This is your knee right
6 here. You see that skin, that skin above his hips?
7 You're directly behind the diaphragm is where your knee
8 is.

9 MR. FINE: Is that a question?

10 BY MR. NISENBAUM:

11 Q. Isn't that correct? Your knee is directly behind
12 his diaphragm?

13 MR. FINE: Asked and answered. Calls for expert
14 opinion.

15 BY MR. NISENBAUM:

16 Q. Correct?

17 A. Kind of hard to tell, sir.

18 Q. Well, it's not hard for me to tell. I don't know
19 that your body cam shows much more in terms of where it
20 is, but -- and it's fairly obvious. And you can tell
21 your knee is pressed against him. In part you can see
22 the fabric is stretched where your knee is pushing down.
23 You see how all the stretch marks on the fabric go
24 towards where your knee is pressing into? Do you see
25 that?

1 MR. FINE: Calls for speculation.

2 THE WITNESS: I don't know exactly if it's being
3 stretched, but I can see the shirt as well.

4 BY MR. NISENBAUM:

5 Q. I guess you don't understand that either.

6 Continuing at 11:44.

7 Okay. Pausing again at 11:51. Mr. Gutzalenko is
8 saying "I can't breathe. Stop. Please. I can't
9 breathe." Your knee remains in the same position, and
10 you could tell if the camera came back a little more
11 that you're definitely -- sorry, I'm moving forward -- I
12 mean, you're right kind of at the base of the rib cage,
13 right, with your knee?

14 MR. FINE: Calls for expert opinion. Calls for
15 speculation. Misstates the video. Misstates prior
16 testimony.

17 BY MR. NISENBAUM:

18 Q. Can you see that?

19 MR. FINE: Same objections.

20 THE WITNESS: It's hard from that angle to tell,
21 sir.

22 BY MR. NISENBAUM:

23 Q. Okay. 11:51, I'm going to hit play.

24 All right. You got off him there. All right.

25 How long did you have your knee in his back?

1 MR. FINE: Vague and ambiguous.

2 BY MR. NISENBAUM:

3 Q. On Mr. Gutzalenko. Throughout the entire
4 incident, can you estimate how long your knee was on his
5 back cumulatively?

6 MR. FINE: Vague and ambiguous and misstates the
7 video.

8 THE WITNESS: My knee wasn't in his back, but my
9 knee was obstructing his back, and at some points my
10 knee did make contact with his back but it wasn't in it.

11 BY MR. NISENBAUM:

12 Q. The picture I just showed you, the part I just
13 showed you, your knee was in his back there, right?
14 There was one point in time when your knee was in his
15 back, correct?

16 MR. FINE: Vague and ambiguous as to "in his
17 back." Asked and answered. Calls for -- excuse me.
18 Misstates testimony. Misstates the video.

19 Go ahead.

20 BY MR. NISENBAUM:

21 Q. Against his back?

22 MR. FINE: Same objections.

23 BY MR. NISENBAUM:

24 Q. Against and into his back?

25 MR. FINE: Vague and ambiguous as to "into his

1 back." Misstates the video. Misstates testimony.

2 Go ahead.

3 THE WITNESS: No, sir, my knee was not in his
4 back. My knee was on -- making contact with his back
5 and obstructing his -- his back for a little bit.

6 BY MR. NISENBAUM:

7 Q. So the video I just showed you does not refresh
8 your recollection that your knee was actually pressing
9 against his back applying force against his back with
10 your knee?

11 MR. FINE: Argumentative. Asked and answered.

12 THE WITNESS: At some time at points during that
13 contact my knee did apply some pressure to his torso but
14 not of significant pressure.

15 BY MR. NISENBAUM:

16 Q. I'm going to scroll back a little bit.

17 MR. FINE: Your screen is no longer shared, Ben.
18 Just a reminder.

19 MR. NISENBAUM: Hold on. Trying to get a time
20 stamp. Okay. Now I'm going to go back to Tagorda's
21 video. So the timing that I just showed you, let me
22 share the screen. This is not Tagorda's video yet.
23 This is still your video. You have a time stamp, so
24 it's 18:51:28 that we're talking about. You can see
25 that time stamp up here where it says Axon, Axon body 2

1 and next to T. You see that?

2 THE WITNESS: Yes, sir.

3 MR. NISENBAUM: Okay.

4 MR. FINE: Your screen is not shared anymore.

5 MR. NISENBAUM: I have to change the video out.

6 MR. FINE: I'm sorry.

7 MR. NISENBAUM: Working on it.

8 MR. FINE: I heard the sound going. I just
9 wanted to make sure.

10 MR. NISENBAUM: Well, that's what happens when
11 you switch the video. It's playing automatically and
12 you know.

13 BY MR. NISENBAUM:

14 Q. All right. So let me -- no it's -- so this is --
15 I'll share. Can you see this, Officer?

16 A. Yes, sir.

17 Q. Okay. So this is from Officer Tagorda's video
18 with time stamp 18:51:19. So the other one was
19 18:51:28. Now, you testified just now that your knee
20 was not in Mr. Gutzalenko's back in the clip that I
21 showed you, which was 18:51:28. So this is a different
22 camera, different view. This is earlier. This starts
23 nine seconds earlier. I can even go back further but
24 your knee right there, it's right in the center of
25 Mr. Gutzalenko's back. You can see it right here,

1 correct?

2 MR. FINE: Misstates the video. Vague and
3 ambiguous as to "in his back."

4 THE WITNESS: My left knee is making contact with
5 his back.

6 BY MR. NISENBAUM:

7 Q. Yes. With the center, roughly the center of
8 Mr. Gutzalenko's back?

9 MR. FINE: Misstates the video.

10 MR. NISENBAUM: It does not misstate the video.
11 It's a totally accurate description of the video.

12 MR. FINE: I disagree that your description of
13 the video is accurate.

14 MR. NISENBAUM: Well, let's see. There's the
15 butt crack right around there. You see the cursor?

16 MR. FINE: I'm not being deposed today.

17 MR. NISENBAUM: I know. I know, but making these
18 objections is frankly coaching the witness and improper.

19 MR. FINE: I haven't made a single speaking
20 objection. I'm stating that in my opinion you're
21 misstating video, and I'm going to keep stating it if I
22 think you're doing it.

23 MR. NISENBAUM: But I'm not misstating the video.

24 MR. FINE: I believe you are.

25 MR. NISENBAUM: No one can make that claim.

1 MR. FINE: Well, there's no judge here to decide
2 on it, is there?

3 MR. NISENBAUM: Well, that's the point.

4 MR. FINE: Right. And I'm going to keep making
5 it because I disagree with you.

6 MR. NISENBAUM: Exactly. At some point it will
7 become a problem. Now, look --

8 MR. FINE: We'll deal with it then, I guess.

9 BY MR. NISENBAUM:

10 Q. Where -- where is your knee relative to
11 Mr. Gutzalenko in this picture? We're 18:51:19 in the
12 time stamp, the Axon, time stamp of Tagorda's video.

13 A. My left knee is making contact with the upper
14 right side of his torso.

15 Q. By upper right side, you mean up around the
16 shoulder blade?

17 A. I would say around the shoulder blade yes, sir.

18 Q. Okay. So I'm going to play.

19 By the way, I'm pausing it at 18:51:23?

20 Your right knee is not on the ground, correct?

21 A. Correct, sir.

22 Q. So your right knee is not on the ground. The
23 only appendage of yours that is on the ground, you have
24 your right foot on the ground, you have the left ball of
25 your toes on the ground, ball of your feet and your toes

1 on the ground, you have your knee, and then you have
2 your left hand on Mr. Gutzalenko's left shoulder,
3 correct?

4 A. Not necessarily, sir. My right -- I apologize.
5 My left knee is making contact with Mr. Gutzalenko's
6 upper right side of the torso, and my weight is
7 distributed across both of my feet, specifically on the
8 left ball of my foot and on both of my hands which are
9 posted on Mr. Gutzalenko's, I believe, left shoulder and
10 right -- my right hand is on the floor or/and
11 Mr. Gutzalenko's arm.

12 Q. Are you trying to say that your weight is
13 distributed evenly between your feet, your left and
14 right feet?

15 MR. FINE: Misstates testimony.

16 THE WITNESS: No, sir.

17 BY MR. NISENBAUM:

18 Q. Is that what you're saying?

19 A. No, sir. I'm stating that my weight is
20 distributed across all of my limbs.

21 Q. Equally?

22 MR. FINE: Calls for speculation.

23 THE WITNESS: No, sir. I mean it's -- I could
24 tell you that most of my weights are distributed on both
25 my hands and on the left on the ball of my feet.

1 BY MR. NISENBAUM:

2 Q. So you're saying that your knee is in contact
3 with Mr. Gutzalenko -- strike that.

4 Your knee is in contact with Mr. Gutzalenko's
5 back in this picture, correct?

6 MR. FINE: Vague and ambiguous.

7 THE WITNESS: Depicted in this paused frame on
8 the body-worn camera, my left knee is touching
9 Mr. Gutzalenko's upper right section of his torso.
10 However, my weight is distributed across the left ball
11 of my foot, both of my hands, and very very slightly on
12 my right foot.

13 BY MR. NISENBAUM:

14 Q. Right. Very slightly on your right foot. Most
15 of it is --

16 A. On the ball of my left foot.

17 Q. Well, and your knee.

18 MR. FINE: Misstates testimony.

19 BY MR. NISENBAUM:

20 Q. So I'm going to hit play.

21 All right. Pausing at 51:29. Let me go back to
22 51:28.

23 Okay. So we can see where -- from this angle we
24 can see where your knee is. Now, if we go back to your
25 body cam. That's 26. In any event, you can see --

1 MR. FINE: We didn't see the video.

2 MR. NISENBAUM: Oh. Okay.

3 BY MR. NISENBAUM:

4 Q. So you can see the distance from the top of the
5 shirt collar where the neck is all the way down to where
6 your knee is, right?

7 A. Yes, sir.

8 Q. Okay. Is it your testimony that's what -- that
9 what is depicted here, and this is actually 51:26 on
10 Officer Tagorda's cam, is it your testimony that what is
11 depicted here is your knee on Mr. Gutzalenko's shoulder
12 blade?

13 A. From this freeze frame here, sir, looks like my
14 left foot -- sorry -- my left knee is placed and making
15 contact with Mr. Gutzalenko's lower right torso.

16 Q. Lower right torso. Okay. And then again we're
17 now at -- there we are, 28:00. So you can tell -- you
18 see your knee right then, the very top of your knee.
19 We're paused at 18:51:28. You can see your knee really
20 hasn't changed position from where it was at 18:51:26,
21 correct?

22 A. Looks like it's in the relatively same vicinity.

23 Q. Okay. So again, are you able to see the video
24 now? This is Tagorda's video. Is that on your screen?

25 A. Yes, sir.

1 Q. Okay. All right. So we're at 18:51:26.

2 Now we're at 18:51:28. So here your knee is in
3 his lower back.

4 A. It looks like.

5 MR. FINE: This is belated. Vague as to lower
6 back.

7 BY MR. NISENBAUM:

8 Q. Pressed against his lower back? I thought you
9 said before it was at the shoulder blade, but which
10 one --

11 A. From this perspective it looks like my left knee
12 is making contact with Mr. Gutzalenko's upper right
13 torso.

14 Q. It's the same -- same -- right. You said upper
15 right torso, shoulder blade I think you said. This is
16 the same time, same shot. So you're saying from the
17 other shot it looks like it's the lower back. From this
18 shot it looks like it's the upper back or upper torso.
19 In reality it was the middle of his back, correct?

20 MR. FINE: Misstates testimony. Misstates the
21 video. Asked and answered repeatedly. You can answer
22 again, Officer Tran.

23 THE WITNESS: No, sir.

24 BY MR. NISENBAUM:

25 Q. Okay. Actually, let me continue to share. All

1 right. When Mr. Gutzalenko was saying "I can't
2 breathe," while you were restraining him, what steps did
3 you take to make sure that he could breathe? And I'm
4 talking about while you were restraining him.

5 A. I was keeping significant of my weight off of
6 him.

7 Q. And how did you do that?

8 MR. FINE: Asked and answered.

9 BY MR. NISENBAUM:

10 Q. By doing -- let me just ask you this: Is what is
11 depicted on the screen right now, 18:51:28, is that an
12 example of you keeping your weight off of
13 Mr. Gutzalenko?

14 A. In this video here, this freeze frame, it shows
15 me distributing my weight across both my hands and both
16 my feet while my left knee is making contact with
17 Mr. Gutzalenko's back.

18 Q. So this is an example and this is 1- -- 18:51:28
19 on Tagorda's body cam, it's 6:44 on the actual file time
20 stamp, depicts an example of you keeping your body
21 weight off of Mr. Gutzalenko, correct?

22 MR. FINE: Misstates testimony.

23 THE WITNESS: Could you repeat that, sir? I
24 apologize.

25 ///

1 BY MR. NISENBAUM:

2 Q. Sure. What is depicted on the frame that is in
3 front of us which is a pause of Tagorda's video, body
4 cam video, Axon time stamp 18:51:28, file time stamp
5 06:44, is an example of you keeping your body weight off
6 of Mr. Gutzalenko, correct?

7 MR. FINE: Same objection.

8 THE WITNESS: No, sir. That's incorrect.

9 BY MR. NISENBAUM:

10 Q. Okay. Well, then tell me.

11 A. I am making contact with him and if I'm making
12 contact with Mr. Gutzalenko's person, I will be adding
13 some pressure. But majority and significant of my
14 weight is on the ball of my left foot distributed also
15 along both of my hands and my right leg, sir.

16 Q. Okay. And you understand, I'm sure -- you've had
17 to testify in trials before?

18 A. Yes, sir.

19 Q. Okay. So you understand -- and have you
20 testified in jury trials?

21 A. Yes, sir.

22 Q. And so you understand that, you know, some
23 assertions made by a witness are subject to assessment
24 by a jury, right, in terms of whether it's true?

25 MR. FINE: Vague. Ambiguous.

1 THE WITNESS: Could you rephrase that, sir?

2 BY MR. NISENBAUM:

3 Q. You understand that assessments, that you can
4 make statements, you can say things, but whether or not
5 they're true, that a jury determines what's true and
6 what's false, right?

7 MR. FINE: Incomplete hypothetical.

8 THE WITNESS: I guess, sir.

9 BY MR. NISENBAUM:

10 Q. Okay. So there were a couple times where your
11 camera fell off. Do you know why or how it fell off?

12 A. The body-worn camera against Mr. Gutzalenko's
13 person knocked off my body-worn camera.

14 Q. Okay. And was it a hand that knocked it off?
15 What knocked it off?

16 A. (Inaudible.)

17 THE REPORTER: I'm sorry, could you repeat that?

18 MR. FINE: You're getting really low, Officer
19 Tran.

20 THE WITNESS: My apologies.

21 I don't know, sir.

22 BY MR. NISENBAUM:

23 Q. Okay. So it might have just been your body
24 bumping against his that knocked it off, correct?

25 MR. FINE: Misstates testimony.

1 THE WITNESS: I don't know, sir.

2 BY MR. NISENBAUM:

3 Q. Okay. Well, you testified that he knocked it
4 off, but if you can't tell me what he did that knocked
5 it off, then you don't really know what knocked it off,
6 correct?

7 A. During this incident his body was moving around a
8 lot, my body was moving around a lot. I mean, I can
9 tell you that from my interaction with Mr. Gutzalenko,
10 my body worn was knocked off and I believe that it was
11 knocked off by Mr. Gutzalenko.

12 Q. So I have a question for you. You believe that,
13 but in any event -- now let me stop the share here.
14 I'll come back to it.

15 You actually assisted in the injection of the
16 Versed into Mr. Gutzalenko, correct?

17 MR. FINE: Vague and ambiguous as to assisted.

18 MR. KANTER: Join.

19 THE WITNESS: No, sir.

20 BY MR. NISENBAUM:

21 Q. Okay. You facilitated the injection, right?

22 MR. FINE: Vague and ambiguous as to facilitated.

23 MR. KANTER: Join.

24 THE WITNESS: What do you mean by facilitated,
25 sir?

1 BY MR. NISENBAUM:

2 Q. Let me give you the dictionary definition. I
3 could tell you directly, but I feel more comfortable.
4 You made the injection easy or easier, correct?

5 MR. FINE: Vague and ambiguous. Calls for expert
6 opinion.

7 MR. KANTER: Join. Overly broad.

8 MR. FINE: Join.

9 THE WITNESS: I don't -- I don't know, sir. I
10 think you're trying to refer to the shirt pulling side.

11 BY MR. NISENBAUM:

12 Q. You moved the shirt so the injection so the -- to
13 make it easier for the injection to happen, correct?

14 A. Yeah.

15 Q. Okay. Now, you told -- I know you told -- you
16 testified at the coroner's inquest and you testified
17 that you didn't even see the injection.

18 A. Correct.

19 Q. Do you recall that? Okay. You reviewed your
20 coroner's inquest testimony, I assume?

21 A. Yes, sir.

22 Q. Okay. But you did see it. You were there. You
23 knew when it happened. You pulled the shirt aside for
24 it to happen, correct?

25 MR. FINE: Which one of those questions do you

1 want him to answer?

2 BY MR. NISENBAUM:

3 Q. You pulled the shirt aside for it to happen,
4 correct? For the injection to happen?

5 MR. FINE: Asked and answered.

6 You can tell him again.

7 THE WITNESS: I pulled the shirt.

8 BY MR. NISENBAUM:

9 Q. For -- so the injection could happen, correct?

10 A. Yes, sir. But --

11 Q. But what?

12 A. Things were happening so quickly. I -- I
13 honestly don't recall at some points. I don't remember
14 everything of the interaction.

15 Q. Did you only remember that after I showed it to
16 Officer Hall?

17 A. No, sir.

18 Q. Okay. So you knew that you pulled the shirt
19 aside when he was -- when you testified at the coroner's
20 inquest, correct?

21 A. I knew it from the AVR footage. I was able to
22 recall.

23 Q. In preparation for the deposition and you
24 reviewed the AVR footage and then you -- before I
25 deposed Officer Hall?

1 A. Even before then, sir.

2 Q. Right. But, I guess, you recall that after the
3 coroner's inquest testimony. You didn't remember it at
4 the time of the coroner's inquest; is that right?

5 A. Yes, sir.

6 Q. Did you have any discussion with Officer
7 Richardson of -- regarding this incident?

8 MR. FINE: Did you say Officer Richardson?

9 MR. NISENBAUM: I said officer. I'm sorry. You
10 know.

11 MR. FINE: I know, it's late.

12 BY MR. NISENBAUM:

13 Q. Did you have any discussion with a paramedic
14 whose last name was Richardson, first name Damon, about
15 this incident ever?

16 A. (Inaudible.)

17 Q. I couldn't hear you.

18 A. I don't know who he is.

19 Q. Okay. Well, he's the guy who injected him.

20 A. Oh, no. Not from my recollection, sir.

21 Q. Did you -- was there ever a time when you
22 believed that that Mr. Gutzalenko, and I'm talking about
23 from the time this happened through today, was there
24 ever a time when you believed that Mr. Gutzalenko only
25 became unresponsive after he'd been loaded into the

1 ambulance?

2 MR. KANTER: Objection. Calls for speculation.
3 Lacks foundation. Calls for an expert opinion.

4 MR. FINE: Join.

5 THE WITNESS: Sorry, sir. Could you repeat that
6 question, sir?

7 BY MR. NISENBAUM:

8 Q. Sure. From the time the event happened to today,
9 did you ever have the belief that Mr. Gutzalenko only
10 became nonresponsive after he had been put into the
11 ambulance?

12 MR. FINE: Same objections.

13 MR. KANTER: Join.

14 THE WITNESS: No, sir.

15 BY MR. NISENBAUM:

16 Q. Right. You knew that he became nonresponsive and
17 got CPR, you know, minutes before he was put into the
18 ambulance, right?

19 MR. FINE: Same objections.

20 MR. KANTER: Join.

21 THE WITNESS: I think he got CPR once he got into
22 the ambulance.

23 BY MR. NISENBAUM:

24 Q. Do you recall that he was -- he was noted to be
25 unresponsive before he was even put on the gurney?

DEPOSITION OF OFFICER TOM TRAN - VIDEOCONFERENCE

1 MR. FINE: Vague and ambiguous. Same objections.

2 MR. KANTER: Join. Lacks foundation.

3 THE WITNESS: Yes, sir. I recall him being
4 unresponsive before being placed on the gurney.

5 BY MR. NISENBAUM:

6 Q. And pretty quickly after he was -- strike that.

7 We're going to go back to the video, to Tagorda's
8 video. I find it's actually a lot easier to see, you
9 know, when you have a little bit of distance. It's on
10 your screen?

11 A. Yes, sir.

12 Q. Okay. I'm going to hit play. We're at 6:44.

13 When do you first recall Mr. Gutzalenko's hand
14 going limp?

15 A. When I was trying to pry it from under him.

16 Q. Was that before he was actually handcuffed?

17 A. Yes, sir.

18 Q. And was he still alive at that point?

19 MR. FINE: Calls for expert testimony. Calls for
20 speculation. Lacks foundation.

21 BY MR. NISENBAUM:

22 Q. Did you notice signs of life at that point?

23 A. Yes.

24 Q. Okay. What were those signs of life?

25 A. Him resisting when I try to put his arm or right

1 hand behind his back. He was very tense and he was
2 resisting against it.

3 Q. Okay. Well, I was reading from your interview.
4 This is from page 9 of your interview Bates stamped
5 city_01455, and I'll start.

6 "As I was trying to get the subject's right hand
7 to his back he was very resistant against it. I believe
8 I told him to put his right hand behind his back
9 multiple times, but he didn't comply, so I just kept
10 trying to pull his right hand back to his backside so we
11 can handcuff him to prevent anything further from
12 escalating the situation. We struggled for maybe about
13 a minute or two trying to handcuff the suspect. After
14 that I pulled the suspect's hand to his backside again,
15 but this time it wasn't tense. It was very, lack of
16 term, limp.

17 "Question: Uh-huh.

18 "Answer: And that's when Officer Hall handcuffed
19 both hands behind his back and rolled the suspect onto
20 his right side and I noticed he was -- looks like he was
21 jerking. Looks like he's trying to breathe.

22 "Question: Uh-huh.

23 "Answer: So I applied some sternum rubs to get a
24 response to him."

25 So what I didn't see in your interview was any

1 discussion about when the Versed shot was injected, but
2 now that we know when it was injected and you've seen
3 it, did his hand go limp before the Versed shot or
4 after?

5 A. I'm not too sure, sir. Could you play the video
6 again?

7 Q. Sure. This is Tagorda. So we're at 7:09. The
8 handcuffing is beginning. I know it takes a little
9 while.

10 I'll go 7:15, I'll hit play. The injection is
11 about at eight minutes.

12 So that's the injection. Had his -- had he gone
13 limp? Had you already noticed the hand going limp prior
14 to that?

15 A. Yes, sir.

16 Q. Okay. About how long prior to that in what we've
17 watched did you notice the hand go limp?

18 A. Probably seconds.

19 Q. Seconds before the injection?

20 A. I would estimate it was not too long.

21 Q. Then you applied some sternum rubs to get a
22 response to him, correct?

23 A. After he became nonresponsive, yes, sir.

24 MR. FINE: You're getting a little low again.

25 Sorry, Ben.

1 THE WITNESS: After he became unresponsive, yes,
2 sir.

3 BY MR. NISENBAUM:

4 Q. Let me ask you this: Did you see whether the --
5 whether Paramedic Richardson checked his pulse before he
6 injected him?

7 A. No.

8 Q. I'm going to hit -- we're at 7:36. I'm going to
9 hit play.

10 It looks like you can see the belly breathing in
11 and out. Did you see that?

12 MR. KANTER: Objection. Calls for speculation.
13 Lacks foundation. Calls for expert opinion.

14 MR. NISENBAUM: I don't think it does.

15 BY MR. NISENBAUM:

16 Q. Did you see the belly breathing in and out?

17 MR. FINE: Same objection.

18 BY MR. NISENBAUM:

19 Q. Let me go back. I'll go back to --

20 MR. FINE: Did the court reporter get that
21 answer?

22 THE REPORTER: No. If he did answer, I did not
23 get the answer.

24 Did you answer to the last question?

25 (Record read.)

DEPOSITION OF OFFICER TOM TRAN - VIDEOCONFERENCE

1 THE WITNESS: I answered I saw his stomach
2 moving.

3 BY MR. NISENBAUM:

4 Q. Okay. In a manner that as a lay person you would
5 be -- think it's consistent with breathing?

6 MR. KANTER: Same objections.

7 THE WITNESS: Yes, sir.

8 BY MR. NISENBAUM:

9 Q. Okay. So I'm going to hit play at 07:28.
10 Pausing it at 7:43. I know I asked you about this
11 already, but you were in holding the -- the collar back,
12 you were attempting to facilitate the injection by the
13 paramedic, correct?

14 MR. FINE: Vague and ambiguous as to facilitate.

15 MR. KANTER: Join.

16 THE WITNESS: I was pulling the shirt, sir, yes.

17 BY MR. NISENBAUM:

18 Q. In order to keep it clear for the paramedic to
19 give the injection, correct?

20 A. Yes, sir.

21 Q. I'm sorry, I didn't hear you.

22 A. Yes, sir.

23 Q. Thank you. Play at 7:43.

24 Okay. Next question. We're at 7:56. You reach
25 over. This is after the injection has been given. You

1 reach over and I think you're padding Mr. Gutzalenko's
2 chest. Do you know what you were doing there?

3 A. My recollection, I think I was patting his chest.
4 I don't really remember, but from the footage it looked
5 like I was patting is his chest.

6 Q. Were you -- were you just basically saying "All
7 right. We're good to go here," something like that in
8 your own mind and that's what the patting was or was it
9 something else?

10 A. I was trying to comfort him.

11 Q. Okay. You were trying to say like "You're going
12 to be all right"?

13 A. Yes, sir. Because in my mind I thought that shot
14 was going to help him.

15 Q. All right. Well, we're at 7:56.

16 You don't actually have a personal
17 recollection -- now that we've watched all this, do you
18 have a personal recollection of seeing the paramedic put
19 the needle into him?

20 A. Just based off my recollection.

21 Q. What's that?

22 A. Sorry, sir. Could you state that question again?

23 Q. Sure. I know before you didn't remember this
24 part of it, right, pulling the shirt? But now that
25 we've watched this video several times and you saw it in

1 the last deposition and we've had all this discussion,
2 has it jogged your recollection at all as to whether or
3 not you actually saw the needle go into him or saw the
4 syringe in the -- in the paramedic's hands?

5 MR. FINE: Compound.

6 THE WITNESS: From the AVR footage, yes, I do
7 recall, but from my personal recollection of it from
8 that incident, no, sir.

9 BY MR. NISENBAUM:

10 Q. Okay. And that's what I'm asking, your personal
11 recollection.

12 A. Oh. No, sir.

13 Q. So you don't have a better recollection than what
14 is shown on the video; is that right?

15 A. Correct, sir.

16 Q. Okay. So you were trying -- up to the point when
17 the -- when the injection was given, you were trying to
18 control Mr. Gutzalenko to the best of your ability and
19 to assist AMR with rendering aid; is that right?

20 MR. FINE: Vague and ambiguous as to assist with
21 rendering aid.

22 MR. KANTER: Join. And misstates prior
23 testimony.

24 MR. FINE: Join.

25 THE WITNESS: Sorry, sir. Could you say that

1 again?

2 BY MR. NISENBAUM:

3 Q. While AMR was on scene, you were trying to
4 control Mr. Gutzalenko to the best of your ability and
5 assist AMR to render aid, correct?

6 MR. FINE: Same objections.

7 MR. KANTER: Compound. Join.

8 THE WITNESS: I was trying to help AMR help
9 Mr. Gutzalenko.

10 BY MR. NISENBAUM:

11 Q. All right. And I'll read from your interview.
12 This is from Bates-stamped city_01454. This is starting
13 on line 42: "That's when I applied my left knee to the
14 right side of his shoulder blade, um, to prevent from
15 getting up. If he's intoxicated under the influence of
16 drugs and he's acting aggressively and combatively -- I
17 don't -- if he gets back on his feet, I don't know. I'm
18 not sure whether he was going to be combative with us,
19 so I didn't want to risk that. So I was trying to
20 control him the best of my -- to the best of my ability
21 and assist AMR render aid."

22 So those are your words. I take it they mean
23 what they say?

24 A. To help Mr. Gutzalenko.

25 Q. And you were trying to help assist AMR to render

1 aid, correct?

2 MR. FINE: Vague as to assist to render aid.

3 MR. KANTER: Join.

4 THE WITNESS: In totality of the circumstances I
5 was trying to get Mr. Gutzalenko and to make the scene
6 safe for AMR to come in to do their job to help
7 Mr. Gutzalenko.

8 BY MR. NISENBAUM:

9 Q. Right. You were trying to -- and as indicated,
10 you facilitated the injection too, correct?

11 MR. FINE: Vague and ambiguous as to facilitated.

12 MR. KANTER: Join. Misstates testimony.

13 MR. FINE: Join.

14 THE WITNESS: Holding on to the shirt.

15 BY MR. NISENBAUM:

16 Q. Yes. So the injection could take place, right?

17 MR. FINE: Objection.

18 MR. KANTER: Objection. Argumentative.

19 Misstates testimony.

20 MR. FINE: Join.

21 MR. NISENBAUM: I think the proper objection
22 might be asked and answered.

23 MR. KANTER: All right. Then I'll assert that
24 one.

25 MR. NISENBAUM: He answered multiple times, so I

1 don't need another time I don't think.

2 BY MR. NISENBAUM:

3 Q. Okay. You told interviewers that you were
4 trained to avoid putting your weight on a person's back
5 with your knee especially with the environment now.

6 What did you mean when you told interviewers
7 "especially with the environment now"?

8 A. During this incident it was around the George
9 Floyd incident.

10 Q. Right. And what's significant about George
11 Floyd?

12 MR. FINE: Calls for speculation. Relevance.

13 BY MR. NISENBAUM:

14 Q. Or what's significant about the George Floyd
15 incident?

16 MR. FINE: Same objections.

17 THE WITNESS: That he stated he couldn't breathe.
18 That he stated he couldn't breathe.

19 BY MR. NISENBAUM:

20 Q. And that you had an officer applying pressure
21 against his neck with his knee?

22 MR. FINE: Calls for speculation.

23 THE WITNESS: To be honest, sir, I don't know. I
24 just know that an officer was using excessive force and
25 Mr. Floyd succumbed to his injuries from it.

1 BY MR. NISENBAUM:

2 Q. Okay. Well, I'm trying to understand what you
3 were saying. So you're the one who referenced the
4 environment now.

5 A. Yeah.

6 Q. And you said, "So I did apply my knee to the
7 right shoulder blade of the suspect's back, but I didn't
8 apply much force."

9 So one -- I mean, when you say shoulder blade,
10 tell me where the shoulder blade is on the body.

11 A. Upper right or left of -- sorry, Mr. Fine.

12 MR. FINE: No. You go ahead.

13 THE WITNESS: Upper right or left of the back
14 torso.

15 BY MR. NISENBAUM:

16 Q. Okay. I take it you knew at the time of this
17 incident that applying compressive force in the middle
18 of someone's back while they're prone with your knee
19 could cause asphyxiation?

20 MR. FINE: Incomplete hypothetical. Go ahead.

21 THE WITNESS: It could, sir.

22 BY MR. NISENBAUM:

23 Q. And you knew that at the time of this incident?

24 MR. FINE: Same objection.

25 ///

1 BY MR. NISENBAUM:

2 Q. I'm talking about the incident with
3 Mr. Gutzalenko. You knew it then, correct?

4 MR. FINE: Same objection.

5 THE WITNESS: Yes, sir.

6 BY MR. NISENBAUM:

7 Q. Okay. Were you required to sign off on any sort
8 of internal review that happened, acknowledge that you
9 received it?

10 MR. FINE: Vague and ambiguous.

11 BY MR. NISENBAUM:

12 Q. The Office of Professional Standards prepared a
13 review, right?

14 A. Yes, sir.

15 Q. Okay. Were you required to read it?

16 A. I remember reading a document. I'm not sure if
17 it was from the PA.

18 Q. I guess what I'm asking is were you required to
19 receive some report of this of an evaluation of this
20 incident and acknowledge that you had read it by signoff
21 or click something on a computer or make an affirmative
22 representation in any manner that you had read that --
23 that review?

24 MR. FINE: Vague and ambiguous and compound.

25 THE WITNESS: To be honest, sir, I don't know.

1 BY MR. NISENBAUM:

2 Q. Okay. Was there a separate interview that was
3 done with internal investigators?

4 MR. FINE: Vague as to internal investigators.

5 THE WITNESS: I just remember giving the
6 sequestered interview and then the coroner's
7 inquisition.

8 BY MR. NISENBAUM:

9 Q. The coroner's inquisition. You know, there's a
10 novel, it's not quite the coroner's inquisition.

11 All right. Well, you agreed with Officer Hall
12 that this was a 5150 that was trying to be effected,
13 correct?

14 MR. KANTER: Objection. Misstates testimony.

15 MR. NISENBAUM: Terrible question.

16 BY MR. NISENBAUM:

17 Q. You agreed with Officer Hall that you needed to
18 put Mr. Ivan on a psychiatric hold, correct?

19 MR. KANTER: Lacks foundation and it misstates
20 prior testimony.

21 MR. FINE: Join.

22 THE WITNESS: It was a consideration.

23 BY MR. NISENBAUM:

24 Q. You say it was a consideration. I'm going to
25 read from your coroner's inquest testimony, and this is

1 with respect to the point in time that after AMR
2 arrived, even at that point in time you agreed -- you
3 believed that this was a psychiatric 5150 hold that had
4 to be put into effect, correct?

5 MR. FINE: Same objections.

6 MR. KANTER: Join.

7 THE WITNESS: At some point I did -- thought
8 that.

9 BY MR. NISENBAUM:

10 Q. Well, let me -- let me read from your coroner's
11 inquest testimony starting at page 46 line 15:

12 "Question: Did you indicate at some point, you
13 or Officer Hall, that you would 5150 him?

14 "Answer: During that point, no. When AMR got
15 there and he -- I thought he was being cooperative, so
16 there's no point to place him on a mandatory psychiatric
17 hold if he's willing to get the help that he needs.

18 "Question: All right.

19 "Answer: Once AMR got there and he was
20 uncooperative, and it was very obvious that he was not
21 cooperative with receiving the aid that he needed, I was
22 not comfortable with letting Mr. Ivan just walk away in
23 the condition that he is. And my belief when your skin
24 is blue and purple, when your eyes are bloodshot red,
25 when you have cuts on your body and you're bleeding

1 profusely, you need medical help. And if you are unable
2 to care for yourself, my duty is to care for you. At
3 that point when Mr. Ivan decided not to cooperate with
4 AMR, I agreed with Officer Hall that we needed to place
5 Mr. Ivan on a psychiatric hold."

6 Does that refresh your recollection that after
7 AMR arrived and Mr. Gutzalenko was becoming
8 uncooperative and didn't want to deal with the
9 paramedics, that he needed to be placed on a 5150 psych
10 hold?

11 MR. KANTER: I'll just object that it calls for
12 speculation and also would mischaracterize the video we
13 just watched.

14 MR. FINE: Join.

15 THE WITNESS: During this time, sir, there was a
16 lot of things going through my mind. It -- there was
17 crimes involved, there was 5150 considerations involved,
18 things evolved very rapidly. My mind was racing very
19 fast, a lot of things went through my mind. But
20 eventually when Mr. Gutzalenko did not want to receive
21 the help from AMR, at that point I did decide to, yes,
22 sir, he -- he needed medical assistance whether if he
23 wanted it or not, and I was going to place him on a
24 psychiatric hold if necessary.

25 ///

1 BY MR. NISENBAUM:

2 Q. Okay. So when you said -- when you testified at
3 the coroner's inquest, "I agreed with Officer Hall that
4 we needed to place Mr. Ivan on a psychiatric hold," you
5 were referring to a 5150, correct?

6 Sorry, I spoke over you. Go ahead.

7 A. Yes, sir.

8 Q. Okay. And was there a time after AMR arrived and
9 you decided that he needed to be put on 5150 psychiatric
10 hold to when he collapsed that you decided he no longer
11 needed to be 5150'd?

12 MR. KANTER: Object. It's vague and ambiguous.
13 Overly broad.

14 MR. FINE: I may have misheard you, but to the
15 extent you said collapsed, I would just say misstates
16 the video.

17 MR. NISENBAUM: Became unresponsive.

18 THE WITNESS: Sir, could you rephrase that?

19 BY MR. NISENBAUM:

20 Q. There was an echo that was throwing me off and
21 maybe others.

22 Was there ever -- there it goes.

23 (Zoom audio disruption.)

24 BY MR. NISENBAUM:

25 Q. Was there ever a time after you decided he

1 need -- Mr. Gutzalenko needed to be 5150'd to a point in
2 time when he started getting CPR that you thought this
3 was no longer a 5150 situation?

4 MR. KANTER: Object. It lacks foundation. I
5 think it misstates his prior testimony.

6 MR. FINE: Join.

7 THE WITNESS: At that point I thought he was
8 unresponsive. Regardless, I didn't think much of it.
9 The only thing I was concerned about was Mr. Gutzalenko.

10 BY MR. NISENBAUM:

11 Q. But you were -- strike that.

12 The answer is you were not -- up to the point
13 when he became unresponsive, it was going to be a 5150,
14 correct?

15 MR. KANTER: Objection. Lacks foundation.
16 Misstates testimony. Calls for speculation.

17 MR. FINE: Same objection. Sorry. Join. It's
18 late.

19 THE WITNESS: If I'm understanding -- well, could
20 you restate that question, sir?

21 BY MR. NISENBAUM:

22 Q. Sure. I'm just asking once AMR arrived and he
23 wasn't cooperative, then you were clear -- you and
24 Officer Hall were clear this is going to be a 5150,
correct?

1 MR. KANTER: Same objections.

2 MR. FINE: Join.

3 THE WITNESS: It was likely.

4 BY MR. NISENBAUM:

5 Q. Okay. He would be further evaluated for 5150,
6 correct?

7 A. Yes, sir.

8 Q. Okay. And I think -- when you testified at the
9 inquest, "I agreed with Officer Hall that we needed to
10 place Mr. Ivan on a psychiatric hold."

11 "Needed to" means that you had already decided
12 that he had met the criteria for 5150, correct?

13 MR. KANTER: Objection. Argumentative. Lacks
14 foundation. We've gone over this. It's asked and
15 answered and it mischaracterizes the video we watched.

16 MR. FINE: Join.

17 THE WITNESS: Sir, can you ask the question
18 again?

19 BY MR. NISENBAUM:

20 Q. When you testified at the coroner's inquest that
21 at the point when Mr. Ivan decided not to cooperate with
22 AMR, you agreed with Officer Hall that we needed to
23 place Mr. Ivan on a psychiatric hold?

24 A. Yes, sir.

25 Q. It was necessary to put him on a psychiatric

1 hold, you believed, correct?

2 MR. FINE: Same objections.

3 THE WITNESS: Correct.

4 MR. KANTER: Vague and ambiguous as to time in
5 addition.

6 MR. FINE: Join.

7 THE WITNESS: Things were rapidly evolving and
8 changing, but generally yes, sir. That was a serious
9 and likely consideration.

10 BY MR. NISENBAUM:

11 Q. It wasn't just a consideration. You thought it
12 needed to happen, right?

13 MR. KANTER: Same objections and argumentative.

14 MR. FINE: Join. Misstates testimony.

15 MR. KANTER: Join.

16 THE WITNESS: He was not going to cooperate, yes,
17 sir.

18 BY MR. NISENBAUM:

19 Q. Which he wasn't, right?

20 A. Correct, sir.

21 Q. Okay. And that was the case all the way until he
22 lost a heartbeat, right?

23 A. No, sir.

24 Q. Okay. When did that stop being the case?

25 A. He was cooperative at first, but then when AMR

1 got there --

2 Q. I meant from the point AMR got there and you
3 decided he needs to be put on a psychiatric hold, that
4 remained the same from that point until he lost a
5 heartbeat, correct?

6 MR. KANTER: Objection. Argumentative, lacks
7 foundation. Mischaracterizes prior testimony.

8 MR. FINE: Join.

9 THE WITNESS: Mr. Gutzalenko was combative and
10 resisting towards AMR.

11 BY MR. NISENBAUM:

12 Q. Okay. And you thought he needed to be 5150'd up
13 until the point when he became unresponsive, correct?

14 MR. FINE: Same objections.

15 MR. KANTER: Join.

16 THE WITNESS: Correct.

17 BY MR. NISENBAUM:

18 Q. Okay. And a 5150 is something that you are
19 authorized to put in place, correct? You can do a 5150
20 evaluation?

21 A. Yes, sir.

22 Q. Okay. So -- and you could -- you could do a 5150
23 yourself and if he was -- didn't require an ambulance,
24 you could actually drive him to the hospital yourself,
25 right?

1 MR. FINE: Incomplete hypothetical. Calls for
2 speculation.

3 THE WITNESS: No, sir.

4 BY MR. NISENBAUM:

5 Q. Okay. Do you always have to call an ambulance
6 when there's a 5150?

7 MR. FINE: Same objections.

8 THE WITNESS: Yes, sir.

9 BY MR. NISENBAUM:

10 Q. Okay. And then -- and again, the 5150 -- a 5150
11 is a law enforcement detention, correct?

12 MR. FINE: Calls for a legal conclusion.

13 MR. NISENBAUM: Strike that.

14 BY MR. NISENBAUM:

15 Q. Based on your training, a person is not -- does
16 not have the right to leave a 5150, to voluntarily a
17 5150 investigation, correct?

18 THE WITNESS: Once an officer has elected to
19 place someone on a 5150 hold, a psychiatric hold, they
20 are no longer free to leave.

21 BY MR. NISENBAUM:

22 Q. Okay. And that was true prior to -- strike that.

23 Mr. Gutzalenko was not free to leave prior to
24 being injected with Versed by Paramedic Richardson,
25 correct?

1 A. Correct, sir.

2 MR. NISENBAUM: Okay. I think that's all the
3 questions I have. Give me one moment. Give me like
4 five minutes. Let me confer with my team. I'm going to
5 mute.

6 MR. FINE: So back at 3:22.

7 (Off the record.)

8 MR. KANTER: I have a couple of questions.

9 EXAMINATION

10 BY MR. KANTER:

11 Q. Officer Tran, Mr. Gutzalenko was not formally
12 placed on a 5150 hold in this case, correct?

13 A. Correct, sir.

14 Q. It was just something that was under
15 consideration at all times during your presence at the
16 scene?

17 A. Yes, sir.

18 Q. And although that consideration was thought
19 about, it wasn't expressed verbally to anyone, was it?

20 A. No, sir, it wasn't.

21 Q. You didn't tell the AMR medics that you were
22 considering 5150 hold, correct?

23 A. No, sir.

24 Q. And I want to make sure I understand, if a 5150
25 hold is placed on a subject by the police, the police

1 are within their rights to simply take that person to a
2 psych facility, are they not?

3 A. Yes, sir.

4 Q. Thank you. I don't have anything further.

5 MR. FINE: I have just a few.

6 EXAMINATION

7 BY MR. FINE:

8 Q. You talked a little bit, Officer Tran, about when
9 you were much younger, mixed martial arts training that
10 you went through. Do you recall testifying about that?

11 A. Yes.

12 Q. Sorry, was that a yes? I couldn't hear you.

13 A. Yes, sir.

14 Q. In your law enforcement career, have you ever
15 employed any tactics or training that you learned
16 independently in your MMA training?

17 A. No, sir.

18 Q. And so if there's a need to physically restrain
19 someone as part of your duties as a law enforcement
20 officer, what tactics do you use?

21 A. Only the ones that have been taught to me and
22 approved by the police department and/or the police
23 academy.

24 Q. Okay. You said a couple of times that you were
25 using your left knee. I think the word you used was to

1 obstruct Mr. Gutzalenko's back. What did you mean by
2 that?

3 A. To obstruct Mr. -- well, I used my knee to
4 obstruct his back. He was trying to roll back a lot,
5 and I didn't want him to roll back, just be on his back,
6 to where he could choke on his vomit or the blood that
7 he was spitting up. But additionally, my knees were
8 hovering over his back and at time I did make contact
9 but not a lot of pressure was put on his back. I didn't
10 want him to stand up, and before that he was stumbling
11 around. I didn't want him to fall, hit his head, hit a
12 car, he was stumbling towards the roadway. I didn't
13 want him to get hit by a car. He was combative. I
14 didn't want him to hurt himself, officers or AMR or put
15 the community at risk.

16 There was a lot of things going through my mind.
17 He vandalized a shop, he stole some things, he had
18 visible injuries already. It was many things going
19 through my mind, but my primary thing was if I can keep
20 him here in a safe condition, I wouldn't have to worry
21 about him running to the street and the environment
22 hurting him or him hurt other people.

23 Q. Did Mr. Gutzalenko -- you might have just said
24 this but just so I'm clear -- did he try to flip over
25 onto his back while you were trying to hold him in that

1 recovery position?

2 A. Yes, sir, multiple times. I at least counted
3 five or six times, sir.

4 Q. And you thought -- well, strike that.

5 Why did you think it was important again for him
6 to be in that sort of recovery position on his side?

7 A. So he wouldn't choke on his vomit or the blood
8 that he was spitting up. But as well from my training,
9 if you lay on your side you breathe a lot better than
10 having to lay on your back and the weight push -- your
11 own weight is pushing down on yourself.

12 Q. Okay. And Mr. Gutzalenko also while you, I
13 guess, had your hands on him in the recovery position,
14 he tried to get up too; is that correct?

15 A. Yes, sir, multiple times.

16 Q. How many times?

17 A. At least three times.

18 Q. And when you first encountered Mr. Gutzalenko,
19 was he able to stay upright on his feet under his own
20 power?

21 A. No, sir. He actually collapsed twice if I recall
22 correctly.

23 Q. Okay. Were you concerned about him potentially
24 hurting himself if he collapsed again?

25 A. Absolutely.

1 MR. NISENBAUM: Objection. There's been a ton of
2 leading questions.

3 MR. FINE: Okay. That was the last one. I'm
4 done. Good to go.

5 MR. NISENBAUM: Quick question. Maybe two.

6 EXAMINATION

7 BY MR. NISENBAUM:

8 Q. What does the phrase 5-1-5-0 mean?

9 A. Just top of my head, it sounds like 5150. That
10 was the first time I heard of it, but I know officers
11 have used different lingo so that subjects don't --
12 because people hear 5150, they, you know, it's a
13 reaction that I don't want, that officers don't want.
14 So I think that's what the 5-1-5-0 was intended.

15 Q. And that was said in the presence of the
16 paramedics, correct, the 5-1-5-0?

17 MR. KANTER: Calls for speculation. Lacks
18 foundation.

19 MR. FINE: Join.

20 BY MR. NISENBAUM:

21 Q. Correct?

22 A. I don't want to go off the top of my mind, but if
23 I watch video again I could tell you, sir.

24 Q. I don't need to show to you. I know it's there.

25 So you're not saying that you were trying to

1 conceal that this was a 5150 situation from the
2 paramedics, right?

3 MR. KANTER: Object. The question lacks
4 foundation and mischaracterizes the video as someone
5 saying 5150 means he's under a 5150. I think you're
6 trying to confuse the witness.

7 MR. NISENBAUM: No. I mean, not at all. Did --
8 I'll strike the question. I'll ask a different
9 question.

10 BY MR. NISENBAUM:

11 Q. Did you have a sense that the paramedics were
12 aware that this was a 5150 situation?

13 MR. KANTER: Objection. Calls for speculation.
14 Lacks foundation.

15 MR. NISENBAUM: Based on your experience.

16 MR. KANTER: Same objections.

17 THE WITNESS: To be honest with you, no, sir.
18 Because a 5150 is not official until the paper is handed
19 to him, so until then they treat it as a medical
20 response.

21 BY MR. NISENBAUM:

22 Q. If you're detaining a person pursuant to a 5150,
23 that's not a 5150?

24 MR. FINE: Vague and ambiguous. Legal
25 conclusion.

1 MR. KANTER: Join. Lacks foundation and
2 argumentative.

3 MR. FINE: Lacks foundation and argumentative.

4 MR. KANTER: Join.

5 THE WITNESS: Sorry, can you ask that again, sir?

6 MR. NISENBAUM: All right. I was being -- I
7 don't need to ask that question but James has a question
8 to ask.

9 EXAMINATION

10 BY MR. COOK:

11 Q. Yeah. Okay. So James Cook with the plaintiffs.
12 So, yeah, Officer Tran, how long did you train
13 MMA?

14 MR. FINE: Asked and answered.

15 THE WITNESS: Since I was a young age. I don't
16 have a definite answer for it, like a set number but
17 since --

18 BY MR. COOK:

19 Q. Okay. Did you do jiu-jitsu as well?

20 MR. FINE: Asked and answered.

21 THE WITNESS: Yes, sir.

22 BY MR. COOK:

23 Q. Okay. What belt are you in jujitsu?

24 MR. FINE: Vague and ambiguous as to jujitsu.

25 THE WITNESS: I trained with an MMA gym, so we

1 didn't do belts.

2 BY MR. COOK:

3 Q. How many years did you do jujitsu?

4 MR. FINE: Vague and ambiguous as to jujitsu.

5 BY MR. COOK:

6 Q. Approximately?

7 A. On and off I'd say maybe six, seven years.

8 Q. Okay. Did you ever compete jujitsu or mixed
9 martial arts?

10 MR. FINE: Asked and answered.

11 THE WITNESS: Tournament, yes. But not sponsored
12 ones. It could be a community one, a college one, stuff
13 like that.

14 BY MR. COOK:

15 Q. Okay. And you know that knee-on-belly technique,
16 right, for jujitsu, to hold someone as side control or
17 on their back?

18 MR. FINE: Vague and ambiguous.

19 THE WITNESS: I'm not familiar with that term,
20 sir.

21 BY MR. COOK:

22 Q. When you got your knee -- you're using your knee
23 to sort of restrain the person either on their -- on
24 their back or on their -- on their side?

25 MR. FINE: Asked and answered. Vague and

1 ambiguous. Calls for speculation. Lacks foundation.

2 MR. COOK: Well, he said he trained for several
3 years since he was young, so he does have some
4 expertise.

5 MR. FINE: He's also just told you he doesn't
6 know what that technique is that you just said.

7 MR. COOK:

8 Q. Are you familiar with the technique when you use
9 your knee to restrain someone?

10 MR. FINE: Vague and ambiguous.

11 BY MR. COOK:

12 Q. In order to -- go ahead.

13 A. A figure four lock around the belly?

14 Q. Exactly. Like you can restrain someone before
15 you set up a figure four lock.

16 A. Yeah. It's a couple different ones. I'm just
17 not too familiar with the knee on belly.

18 Q. All right. This is a technique that also
19 overlaps with law enforcement; is that correct?

20 MR. FINE: Vague and ambiguous as to overlaps.
21 Misstates prior testimony.

22 THE WITNESS: I've never been taught that.

23 MR. COOK: Okay. I'll leave it at that.

24 MR. FINE: Anything else anybody?

25 MR. NISENBAUM: No.

DEPOSITION OF OFFICER TOM TRAN - VIDEOCONFERENCE

1 THE REPORTER: Mr. Fine and Mr. Kanter, do you
2 want to order a copy of this transcript as well?

3 MR. FINE: Yes, please.

4 MR. KANTER: Yes. I'll take an electronic copy.

5 (Deposition concluded at 3:31 p.m.)

6 --o0o--

DEPOSITION OF OFFICER TOM TRAN - VIDEOCONFERENCE

1 STATE OF CALIFORNIA)
2)
3 COUNTY OF FRESNO)

4 I, LILIANA RODRIGUEZ, Certified Shorthand Reporter,
5 in and for the State of California, do hereby certify:

6 That the foregoing proceedings were taken before me
7 remotely at the time and place herein set forth; that
8 any witnesses in the foregoing proceedings, prior to
9 testifying, were duly sworn; that a record of the
10 proceedings was made by me using machine shorthand which
11 was thereafter transcribed under my direction; that the
12 foregoing is a true record of the testimony given.

13 Pursuant to Federal Rule 30(e), transcript review
14 was requested.

15 I further certify that I am neither financially
16 interested in the action, nor a relative or employee of
17 any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date subscribed my
19 name.

20
21 DATED: _9_/_19_/_24_

22 Fresno, California

23
24 /s/Liliana Rodriguez
25 LILIANA RODRIGUEZ, CSR No. 13783

EXHIBIT 3

DEPOSITION OF OFFICER CEDRIC TAGORDA - VIDEOCONFERENCE

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

--o0o--

IVAN GUTZALENKO, Deceased,)
through his Co-Successors)
in Interest, N.G. and N.I.G,) **CERTIFIED COPY**
minors through their mother)
and Next Friend, Honey)
Gutzalenko, individually)
and as Co-successors in)
Interest for IVAN)
GUTZALENKO, Deceased,) CASE NO.: 3:22-cv-02130-EMC
Plaintiffs,)
vs.)
CITY OF RICHMOND, et al.,)
Defendants.)
_____)

VIDEOCONFERENCE DEPOSITION OF
OFFICER CEDRIC TAGORDA
WEDNESDAY, OCTOBER 30, 2024
10:00 A.M. - 12:29 P.M.

REPORTED BY: Liliana Rodriguez, CSR No. 13783

DEPOSITION OF OFFICER CEDRIC TAGORDA - VIDEOCONFERENCE

INDEX OF EXAMINATION

WITNESS: OFFICER CEDRIC TAGORDA

EXAMINATION	PAGE
By Mr. Nisenbaum	6
By Mr. Kanter	105
By Mr. Fine	106

--o0o--

Appearance Page	3
Exhibit Page	4
Location	5
Declaration Under Penalty of Perjury	109
Reporter's Certificate	110
Disposition	111
Witness Letter	112
Deposition Errata Sheet	113
Attorney's Notes	114

--o0o--

1 REMOTE APPEARANCES

2
3 For Plaintiffs:

4 LAW OFFICES OF JOHN L. BURRIS
5 BY: BEN NISENBAUM, ATTORNEY AT LAW
6 JAMES COOK, ATTORNEY AT LAW
7 Airport Corporate Center
8 7677 Oakport Street, Suite 1120
9 Oakland, California 94621
10 (510) 839-5200
11 Ben.Nisenbaum@johnburrislaw.com
12

13
14 For Defendants:

15 ORBACH HUFF & HENDERSON LLP
16 NICHOLAS FINE, ATTORNEY AT LAW
17 6200 Stoneridge Mall Road, Suite 225
18 Pleasanton, California 94588
19 510.999.7908
20 Nfine@ohhlegal.com
21

22 For Defendants:

23 HINSHAW, MARSH, STILL & HINSHAW, LLP
24 SCOTT R. KANTER, ATTORNEY AT LAW
25 12901 Saratoga Avenue
Saratoga, California 95070
408.861.6500
Skanter@hinshaw-law.com

--o0o--

DEPOSITION OF OFFICER CEDRIC TAGORDA - VIDEOCONFERENCE

WITNESS: OFFICER CEDRIC TAGORDA

MARKED	DESCRIPTION	PAGE
Exhibit A	Interview of Officer Cedric Tagorda (Confidential exhibit)	63
Exhibit B	Officer Tagorda Body Cam Video [Conf City_839].confidential.mp4 (Confidential exhibit)	65

--o0o--

DEPOSITION OF OFFICER CEDRIC TAGORDA - VIDEOCONFERENCE

1 Zoom videoconference deposition of
2 OFFICER CEDRIC TAGORDA,
3 taken on behalf of Plaintiffs, beginning at 10:00
4 a.m. and ending at 12:29 p.m. on Wednesday,
5 October 30, 2024, before Liliana Rodriguez, Certified
6 Shorthand Reporter No. 13783

7
8 --o0o--
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OF OFFICER CEDRIC TAGORDA - VIDEOCONFERENCE

1 REPORTED REMOTELY FROM FRESNO COUNTY, CALIFORNIA;

2 WEDNESDAY, OCTOBER 30, 2024, 10:00 A.M.

3 -oOo-

4 OFFICER CEDRIC TAGORDA,

5 having been first duly sworn,

6 testified as follows:

7 EXAMINATION

8 BY MR. NISENBAUM:

9 Q. Good morning, Officer.

10 A. Good morning.

11 Q. It looks like you have an injury to your right
12 wrist or arm?

13 A. Right wrist, sir.

14 Q. Okay. Broken wrist?

15 A. Torn ligament, reconstructive surgery, pins.

16 Q. Wow.

17 A. Nothing too major.

18 Q. Okay. Obviously, you did not have that injury at
19 the time of this incident with Mr. Gutzalenko, right?

20 A. That's correct.

21 Q. Okay. All right. Can you state and spell your
22 name, please?

23 A. Yes. Cedric Tagorda. Cedric is spelled
24 C-E-D-R-I-C; last is Tagorda, T-A-G-O-R-D-A.

25 Q. Okay. And your current occupation?

DEPOSITION OF OFFICER CEDRIC TAGORDA - VIDEOCONFERENCE

1 A. Police officer at the city of Richmond.

2 Q. Thank you.

3 And how long have you been a police officer for
4 Richmond?

5 A. Over 18 years now.

6 Q. Okay. Do you have any other law enforcement
7 experience?

8 A. I do.

9 Q. Where?

10 A. Berkeley PD. And I was a federal officer in
11 San Francisco.

12 Q. Were you at the federal courthouse?

13 A. I was at the -- the Federal Reserve.

14 Q. Federal Reserve. Okay.

15 All right. When were you at the Federal Reserve?

16 A. I believe in '01.

17 Q. Okay. And then when did you become a Berkeley
18 police officer?

19 A. Back in 2006.

20 Q. And let's see. '24. So 18 years.

21 So you weren't at Berkeley very long, then?

22 A. No.

23 Q. Okay. And you became a -- you would have been a
24 Richmond police officer. You would have become that in
25 2006 too, also?

1 A. '07. Beginning of '07.

2 Q. All right. And where did you attend the police
3 academy?

4 A. Napa.

5 Q. Did Berkeley put you through that?

6 A. No.

7 Q. Did you sponsor yourself?

8 A. I did.

9 Q. Okay. I take it you've testified in court
10 before?

11 A. I have.

12 Q. How many times would you estimate?

13 A. I know well over a hundred times, I believe,
14 throughout my career.

15 Q. And when you were at the police academy, did you
16 receive training in providing courtroom testimony?

17 A. I did.

18 Q. Can you briefly describe for me the training you
19 received?

20 MR. FINE: Overbroad.

21 THE WITNESS: Well, we went over vehicle codes,
22 penal codes, driving.

23 BY MR. NISENBAUM:

24 Q. I'm sorry, let me back up.

25 I'm talking about the training you received to

1 provide courtroom testimony.

2 A. Well, about report writing. We went over
3 courtroom testimony. Actually had me go to the court
4 and do mock trials, mock testimonies.

5 Q. Okay. So you actually had to get up on the stand
6 and pretend to be a witness --

7 A. Correct.

8 Q. -- and get cross-examined by a vicious defense
9 lawyer?

10 A. I wouldn't call him vicious, but yes.

11 Q. Okay. Aggressive?

12 A. At times.

13 Q. Okay. All right. Have you had your deposition
14 taken before?

15 A. Yes.

16 Q. How many times?

17 A. I would say at least a dozen times.

18 Q. Your deposition?

19 A. Depositions?

20 Q. Yeah.

21 A. Like total throughout my career?

22 Q. Yeah. We're in a civil lawsuit.

23 A. Maybe a handful of times.

24 Q. Okay. And what types of cases?

25 A. In-custody deaths, shootings.

1 Q. Okay. Were you a defendant in any of those
2 cases?

3 A. No. Well, one, I guess you would call me a
4 defendant. For an in-custody death or a shooting, yes.

5 Q. Okay. Was it a shooting or an in-custody death?

6 A. Both.

7 Q. Okay. What was the name of the decedent?

8 MR. FINE: Relevance.

9 THE WITNESS: I don't recall.

10 BY MR. NISENBAUM:

11 Q. What's that?

12 A. I don't recall.

13 Q. And when did that happen?

14 MR. FINE: Same objection.

15 Go ahead.

16 THE WITNESS: That happened, I think, a year
17 prior to this case, Gutzalenko's case.

18 BY MR. NISENBAUM:

19 Q. Okay. So obviously, you were with Richmond
20 Police Department?

21 A. That's correct.

22 Q. And has that case been tried yet?

23 A. Yes.

24 Q. Okay. And what was the result of the trial?

25 MR. FINE: Same objection. Relevance.

1 BY MR. NISENBAUM:

2 Q. Go ahead.

3 A. We were cleared of that.

4 Q. Okay. Meaning, a civil jury came back and found
5 that you were not liable?

6 A. Correct.

7 Q. Okay. All right. I started down this road just
8 to get a sense of your understanding of the process.
9 I'll give you some admonitions. By the way, I assume
10 you've had a chance to confer with your attorney to
11 prepare for this deposition, correct?

12 A. Correct.

13 Q. Okay. Can you tell me what documents you've
14 reviewed in preparation for your deposition?

15 A. My report and the transcripts from the last
16 deposition.

17 Q. When you say your report, does that include your
18 interview?

19 MR. FINE: Vague.

20 And, Officer Tagorda, just so we're clear, so
21 unless I instruct you not to answer a question, then
22 after I state my objection, go ahead and answer the
23 question.

24 THE WITNESS: Okay.

25 MR. NISENBAUM: I was going to get to that,

1 but --

2 THE WITNESS: I wasn't sure if we had a judge
3 to --

4 MR. FINE: No judge today.

5 THE WITNESS: Okay. That's what I was waiting
6 for.

7 Sorry, can you repeat the question?

8 BY MR. NISENBAUM:

9 Q. So you said you reviewed your report.
10 Did you review your interview?

11 MR. FINE: Vague.

12 THE WITNESS: I just read -- read over my
13 transcript from the last time I testified.

14 BY MR. NISENBAUM:

15 Q. Okay. Are you talking about at the
16 coroner's inquest?

17 A. Correct.

18 Q. Okay. You were interviewed after this incident,
19 correct?

20 A. Yes.

21 Q. Okay. Did you listen to or review a transcript
22 of that interview?

23 A. Not the interview, no.

24 Q. Okay. So I will give you some admonitions.
25 Since you ought to be pretty familiar with the process,

1 I won't go through all of them.

2 The most basic is your testimony today, although
3 we're not in court, has the same force and effect as if
4 you were testifying live in court and is under the same
5 penalty of perjury.

6 Do you understand that?

7 A. I do.

8 Q. Okay. I'm here to ask you questions. Your job
9 today is to answer those questions to the best of your
10 ability. If you don't understand a question, just say
11 so.

12 Do you understand that?

13 A. Yes.

14 Q. If you don't know the answer to a question, just
15 say so. Don't guess. Don't speculate.

16 Do you understand that?

17 A. I do.

18 Q. Okay. And sometimes people will have only a
19 partial recollection. I'm entitled to as much as you do
20 recall and as much as you do know.

21 Do you understand that?

22 A. I do.

23 Q. Okay. So again, if the answer -- if you don't
24 know, just say so. Don't try to be helpful. As I'm
25 asking a question and you feel like you want to -- like

1 you want to answer or you should know the answer, you
2 know, if you don't know, again, it's very important to
3 say so.

4 I actually am trying to move this deposition
5 along pretty quickly today. I do have to pick up my
6 daughter from school.

7 A. I understand.

8 Q. We won't be here very long. I've already taken
9 the other depositions, which I think you're aware of,
10 although there's another deposition to be taken later.
11 But I've deposed your fellow officers. You know that,
12 correct?

13 A. Correct.

14 Q. And you've reviewed their deposition transcripts,
15 correct?

16 A. I have not reviewed their -- their transcripts,
17 no.

18 Q. Okay. Did you review their coroner's inquest
19 testimony?

20 A. I did not.

21 Q. Okay. Did you review their interviews?

22 A. I did not.

23 Q. Okay. Have you talked to them outside with your
24 counsel, outside of being in the presence of your
25 counsel, have you talked to them about this incident?

1 A. I have not.

2 Q. Okay. And there was nothing wrong with your body
3 cam on the day of this incident, right?

4 A. To my knowledge, no, there was nothing wrong with
5 it.

6 Q. Okay. So having reviewed -- I think it was your
7 coroner's inquest testimony, did you notice any
8 inaccuracies in it?

9 A. No.

10 Q. Okay. As you sit here, how would you rate your
11 recollection of the incident? Do you have a good
12 recollection or hazy, in between?

13 A. I'd say it's -- it's fairly good.

14 Q. Okay. And when did you interview -- when --
15 sorry. When did you review your coroner's inquest
16 transcript?

17 A. Last week, I believe.

18 Q. Okay. All right. When you were at the police
19 academy, did you receive testimony regarding avoiding
20 asphyxiation during restraint?

21 MR. FINE: Vague and ambiguous as to "testimony."

22 THE WITNESS: I -- we vaguely went during -- I
23 believe, during first aid training. I believe we did
24 touch bases on that.

25 ///

1 BY MR. NISENBAUM:

2 Q. Okay. What was discussed?

3 A. Basically a standard first aid. Keeping people
4 in the recovery position to prevent -- keep their
5 airways open, elevating their feet, trying to, you know,
6 prevent people from going into shock, things of that
7 nature.

8 Q. Okay. As a police officer, have you received any
9 training throughout the course of your career whether
10 with the Federal -- at the Federal Reserve or at
11 Berkeley or with Richmond regarding avoiding
12 asphyxiation during restraint?

13 MR. FINE: Vague. Overbroad.

14 THE WITNESS: Again, it's basic first aid, is
15 what we -- we went over.

16 BY MR. NISENBAUM:

17 Q. And that's true through today?

18 A. Yes.

19 Q. Okay. Have you ever had any training that says
20 you should avoid putting weight on a person's back when
21 they're being restrained in a prone position for an
22 extended period of time?

23 MR. FINE: Vague. Overbroad. Incomplete
24 hypothetical.

25 THE WITNESS: Well, we would never place our

1 weight or any weight on any parts of the body that would
2 restrict airflow or cause further duress to any of the
3 subjects that we would encounter.

4 BY MR. NISENBAUM:

5 Q. Okay. Is that training that you received in
6 standard first aid?

7 A. Well, it's -- it's pretty -- it's touched base
8 on. I mean, when you're going over first aid and you're
9 going over restraining individuals you come in contact,
10 that's pretty standard, is you don't want to restrict a
11 subject's airflow or cause them any further duress.

12 Q. What have you been trained restricts a person's
13 airflow?

14 MR. FINE: Vague. Overbroad.

15 THE WITNESS: Could you go into detail exactly
16 what you're asking?

17 BY MR. NISENBAUM:

18 Q. Well, you indicated that your training is that
19 you don't want to do things that restrict a person's
20 airflow.

21 Do I have that right?

22 A. Correct.

23 Q. Okay. So what types of things restrict a
24 person's airflow --

25 MR. FINE: Vague. Overbroad. Incomplete

1 hypothetical.

2 BY MR. NISENBAUM:

3 Q. -- based on your training?

4 A. Well, I think I -- lately, with all the media
5 attention in -- in the past several years -- we can go
6 back to George Floyd. I mean, you know, that brought a
7 lot of media attention. And after that incident, I
8 think a lot of police departments and agencies alike
9 have, you know, touched bases on that and, you know,
10 reiterated that, you know, when encountering individuals
11 on the street or whatnot, you don't want to put yourself
12 in a situation where it's going to draw media attention.

13 So obviously, you know, a lot of agencies such as
14 the Richmond Police Department touched bases on that
15 when we're going over the defensive tactics or anything
16 like that, not just for first aid. It's just standard
17 defensive tactics and -- and things that, you know,
18 would -- would look bad, I guess, on the outside. So,
19 yeah, we are taught not to place weight on people's
20 necks or -- or any areas of the body that's going to
21 cause duress.

22 Q. Well, there's a difference between causing duress
23 and impairing a person's ability to breathe, right?

24 A. True.

25 Q. Okay. So I'm asking a question specifically

1 about avoiding -- doing things that would obstruct or
2 interfere with a person's ability to breathe.

3 What training have you had in that regard?

4 A. Well, again --

5 MR. FINE: Vague. Overbroad.

6 Go ahead.

7 THE WITNESS: Well, again, we're not going to --
8 you know, obviously, we do everything that we can to use
9 a minimum amount of force necessary to compel
10 compliance. If you have a combative person, obviously,
11 you know, it's -- it's different circumstances. You're
12 doing everything you can to try to control that subject,
13 but we're not purposely trying to place any weight or
14 pressure on -- again, on somebody's neck or any parts of
15 their body that's injured that's going to cause them
16 further duress. And I understand that you're talking
17 about airways, so --

18 BY MR. NISENBAUM:

19 Q. I'm not. I'm not. I'm talking about impairing a
20 person's ability to breathe generally.

21 A. All right. Well --

22 Q. Is there a training specific to avoiding putting
23 pressure or weight on a person's neck?

24 A. We don't train to put any pressure on people's
25 necks.

1 Q. I understand that.

2 You're trained to avoid doing that, right?

3 A. Absolutely.

4 Q. Okay. Is there any other part of the body that
5 you're trained to avoid putting pressure or weight or
6 force against, that you're trained if you do apply
7 pressure, weight, force could impair a person's ability
8 to breathe?

9 MR. FINE: Vague. Overbroad. Incomplete
10 hypothetical.

11 THE WITNESS: Well, again, it -- it all depends
12 on the circumstances again. You know, we're not
13 purposely trying to prevent someone from breathing or
14 restricting their airflow. There are times, yeah, that
15 we have to place, you know, weight or body weight on
16 their chest or on their back. It's not our intention to
17 restrict that airflow, but we are trained, you know, to
18 use a minimum amount of force necessary to control that
19 subject and get that particular scene under control.

20 BY MR. NISENBAUM:

21 Q. Okay. Are you trained that you're to use the
22 minimum amount of force necessary?

23 A. Yeah. It just depends on the circumstances, yes.

24 Q. Okay. My next question, have you been trained
25 that if you put weight on a person's back when they're

1 in a prone position, that it can compress their rib
2 cage?

3 MR. FINE: Vague. Overbroad. Incomplete
4 hypothetical. Calls for expert opinion.

5 THE WITNESS: Well, I think I -- people that we
6 come in contact, everybody, we don't know, you know,
7 what type of medical -- what their medical history is
8 or handicaps or whatnot. You know, when we come in
9 contact with a subject, we do what's necessary to get
10 that subject under control. There are times that, yeah,
11 we have to put our body weight on their back or on their
12 chest, but it's not our intentions to restrict their
13 airflow. And we do not know what their handicaps or
14 limitations or their medical history is.

15 MR. NISENBAUM: Sorry, can you read back the
16 question, please?

17 (Record read.)

18 BY MR. NISENBAUM:

19 Q. That's the question.

20 Do you have that question in mind?

21 MR. FINE: Same objections.

22 THE WITNESS: Well, again, I'm not a medical
23 professional, so I can't really answer that. We try --
24 like I said, when we train, we train to control the
25 subject and do what is necessary at the time. We go

1 over that. But as far as training and saying, "Hey, if
2 you put your body weight on that, it's going to," you
3 know, "restrict their airflow," I think it's kind of --
4 I mean, a lot of things can restrict someone's airflow
5 or -- or whatnot. So I'm kind of -- I understand the
6 question, but I don't know exactly how I can explain
7 that to you.

8 BY MR. NISENBAUM:

9 Q. I'm just asking, have you had training that says
10 directly in a succinct way that if you -- while a
11 person's in a prone position, that if you compress their
12 chest, that -- that by pressing down on their backs,
13 that that can compress their chest and thereby interfere
14 with their ability to breathe --

15 MR. FINE: Vague. Overbroad. Calls for expert
16 opinion. Incomplete hypothetical.

17 BY MR. NISENBAUM:

18 Q. -- to the best of your recollection?

19 MR. FINE: Same objections.

20 THE WITNESS: Well, again, in this case, you
21 know, that's not what happened here.

22 BY MR. NISENBAUM:

23 Q. I don't think that was an answer to my question.

24 A. Well, the question -- your question is, have I
25 been trained? And again, a -- you know, that's how they

1 train us, right? But as far as training says, "Hey,
2 this is what could happen," I'm sure they touch bases on
3 that. Could it happen? Sure.

4 Q. Okay. So you have been trained that putting
5 weight on a person's back while they're in a prone
6 position can compress their rib cage and thereby
7 interfere with their ability to breathe; is that
8 correct?

9 MR. FINE: Misstates testimony. Asked and
10 answered.

11 THE WITNESS: Yes. Sure.

12 BY MR. NISENBAUM:

13 Q. Thank you.

14 All right. And have you also been trained that
15 the same is true -- do you know where the diaphragm is
16 in a person's body? Have you had any training on that,
17 or do you have an understanding?

18 A. A diaphragm is located right underneath the rib
19 cage.

20 Q. Right.

21 And do you have an understanding that the --

22 MR. FINE: Calls for expert opinion. Overbroad.

23 (Reporter clarification.)

24 MR. NISENBAUM: Sure. No problem.

25 ///

1 BY MR. NISENBAUM:

2 Q. Do you have an understanding that the diaphragm
3 is also involved in respiration?

4 MR. FINE: Calls for expert opinion. Overbroad.

5 THE WITNESS: Yes.

6 BY MR. NISENBAUM:

7 Q. All right. I'm sure you've had the hiccups
8 before?

9 A. Yes.

10 Q. Okay. You know that that is where the diaphragm
11 gets out of shape with the rest of the lungs, et cetera,
12 right?

13 A. Yes.

14 Q. Okay. So you know that the diaphragm is an
15 integral part of breathing, correct?

16 A. Yes.

17 MR. FINE: Calls for expert opinion.

18 BY MR. NISENBAUM:

19 Q. And have you been -- do you have any training
20 that compressing where the diaphragm is located can also
21 interfere with the person's ability to breathe?

22 MR. FINE: Incomplete hypothetical. Vague.
23 Calls for expert opinion.

24 THE WITNESS: Yes. I would assume so, yes.

25 ///

1 BY MR. NISENBAUM:

2 Q. Okay. And do you understand that as a matter of
3 your experience and common sense or your training or
4 both?

5 MR. FINE: Compound. Same objections.

6 THE WITNESS: So what -- what was -- what are you
7 asking -- what are you asking again?

8 BY MR. NISENBAUM:

9 Q. Do you understand that interfering with the
10 diaphragm can impair a person's ability to breathe? Do
11 you understand that as a function of your experience,
12 your common sense, your training, or some combination of
13 all those?

14 A. I do.

15 MR. FINE: Same objections.

16 Go ahead.

17 THE WITNESS: Yeah, I do.

18 BY MR. NISENBAUM:

19 Q. Okay. All three?

20 A. Yes.

21 Q. You've never been trained that the only way that
22 a person can asphyxiate during restraint is by having
23 someone put their knee in their neck, right? There are
24 other ways that it can happen?

25 MR. FINE: Vague. Misleading.

1 Go ahead.

2 THE WITNESS: Well, I'm not a -- I'm not a
3 medical expert, but I would say those are all things
4 that could happen, yes.

5 BY MR. NISENBAUM:

6 Q. In other words, what you mean is the examples
7 that we just discussed, compressing a person's chest,
8 interfering with their diaphragm, are also ways that a
9 person can asphyxiate during restraint, correct?

10 MR. FINE: Vague. Overbroad. Calls for expert
11 opinion.

12 THE WITNESS: Correct.

13 BY MR. NISENBAUM:

14 Q. Thank you.

15 Have you ever been involved in any other case
16 where a person asphyxiated during restraint?

17 A. No.

18 MR. FINE: Calls for expert opinion.

19 BY MR. NISENBAUM:

20 Q. I'm sorry?

21 A. No.

22 Q. Okay. I didn't really give you admonitions
23 because I felt like you were pretty familiar with the
24 process, but give a pause so that your lawyer can
25 interpose an objection. It will help keep the record

1 clearer. And, you know, as we already discussed, you'll
2 still have to answer the question unless he specifically
3 tells you not to.

4 Do you understand that?

5 A. Yes.

6 Q. And, of course, if you don't understand the
7 question, that too, then just tell me, okay?

8 A. Okay.

9 Q. All right. So at the date when this incident
10 occurred, as of that date, you had the same
11 understanding regarding the multiple ways in which a
12 person can asphyxiate during restraint that we just
13 talked about, correct?

14 A. Correct.

15 Q. Okay. Now, with respect to working with
16 paramedics in the field or EMTs, I assume that that's
17 something you're expected to do on a routine basis,
18 correct?

19 MR. FINE: Vague. Overbroad.

20 THE WITNESS: Correct.

21 BY MR. NISENBAUM:

22 Q. Okay. And as part of that, do you have an
23 understanding that you're expected to help facilitate
24 any medical treatment that the paramedics provide --

25 MR. FINE: Vague and overbroad.

1 BY MR. NISENBAUM:

2 Q. -- for EMTs?

3 MR. FINE: My apologies.

4 Vague and overbroad as to "facilitates."

5 MR. KANTER: Join. Overly broad.

6 BY MR. NISENBAUM:

7 Q. Just because it's two doesn't change it. You
8 still have to answer.

9 A. Correct. If they ask for our assistance, we will
10 assist.

11 Q. Okay. And are there times when you sometimes
12 assist without being asked?

13 MR. FINE: Vague. Overbroad. And as to
14 "treatment" as well in the last question.

15 MR. KANTER: Join. And incomplete hypothetical.

16 MR. FINE: Join.

17 THE WITNESS: If it's obvious that the paramedics
18 are needing assistance, we'll assist.

19 BY MR. NISENBAUM:

20 Q. Okay. And that falls within your police
21 function, correct, your police duties?

22 A. Correct.

23 Q. Thank you.

24 Okay. I assume you've had training with respect
25 to responding to the subjects who are either emotionally

1 disturbed or mentally impaired, correct?

2 A. Correct.

3 Q. Okay. And have you been trained that those are
4 factors to consider when determining the reasonableness
5 of the use of force?

6 MR. FINE: Incomplete hypothetical.

7 THE WITNESS: Correct.

8 BY MR. NISENBAUM:

9 Q. There are other factors too, but those are some
10 of them, correct?

11 MR. FINE: Same objection.

12 THE WITNESS: Correct.

13 BY MR. NISENBAUM:

14 Q. Okay. And when you're dealing with a person
15 who's intoxicated and that intoxication is causing them
16 to act irrationally, you're supposed to keep that in
17 mind as well, correct?

18 MR. FINE: Incomplete hypothetical.

19 THE WITNESS: That's correct.

20 BY MR. NISENBAUM:

21 Q. Okay. All right. And, of course, you're not a
22 doctor?

23 A. I am not.

24 Q. Okay. And it's not your job to determine why a
25 person is acting the way that they're acting. You take

1 them as you find them, right?

2 A. That's correct.

3 Q. Okay. Thank you.

4 Okay. So had you ever had any prior incident or
5 encounter with Mr. Gutzalenko?

6 A. I have not.

7 Q. Okay. Were you familiar with his name, or had
8 you heard about him prior to this incident?

9 A. No.

10 Q. Okay. What was your first notice of this
11 incident?

12 MR. FINE: Vague as to "notice."

13 BY MR. NISENBAUM:

14 Q. Like why did you come to the scene?

15 A. Well, I heard a -- a radio call come in regarding
16 a -- a subject, who was Gutzalenko, going into, I
17 believe, a gas station, causing a disturbance at the gas
18 station. Following that, he was -- there were reports
19 of him walking in the middle of the street. He goes
20 into another -- I believe it was a furniture store
21 causing another disturbance inside the business, reports
22 of him puking in the business, and then walking down the
23 street. And I believe that's how the call came out.

24 Q. Okay. Were there any indications that
25 Mr. Gutzalenko had physically threatened anyone?

1 A. Not that I recall.

2 Q. Okay. How about any indication that he was armed
3 with any kind of weapon?

4 A. Not that I recall.

5 Q. Okay. And when you heard that he was puking in
6 one of the stores, did that cause you to think anything?

7 A. Well, different and training experience. It
8 would -- it sounded like maybe this person was having
9 some type of a medical emergency.

10 Q. Okay. Based on your understanding, people having
11 medical emergencies can cause them to have a mental
12 health emergency as well or sometimes the two go
13 together?

14 MR. FINE: Incomplete hypothetical. Vague.
15 Calls for expert opinion.

16 MR. KANTER: Join.

17 THE WITNESS: That's correct.

18 BY MR. NISENBAUM:

19 Q. Okay. And in this situation, the person was
20 going from store to store, causing a disturbance,
21 puking.

22 Did you consider the possibility that he was in
23 the midst of a mental health emergency as well --

24 MR. FINE: Vague as to time.

25 ///

1 BY MR. NISENBAUM:

2 Q. -- at any time?

3 A. I would say -- say so.

4 Q. Okay. And when did you first consider that
5 possibility, to your recollection?

6 A. While I was en route to the call.

7 Q. Okay. And was it the factors that you described
8 that caused you to think that?

9 A. Yes.

10 Q. Okay. All right. And you've been trained in
11 crisis intervention?

12 MR. FINE: Vague.

13 THE WITNESS: I have.

14 BY MR. NISENBAUM:

15 Q. Are you a crisis negotiator?

16 A. I am.

17 Q. Okay. Is that specialized training that you
18 received outside of -- is there a special course you
19 went to for that training?

20 A. Yes.

21 Q. Is that CIT training?

22 A. It is.

23 Q. Okay. And when did you first take CIT training?

24 A. Probably 15 years ago.

25 Q. Okay. Fifteen years from now, you mean?

1 A. Correct.

2 Q. Okay. Now, as I understand it from your
3 interview, you're a part of the crisis negotiation team
4 as part of SWAT; is that right?

5 A. Yes.

6 Q. Okay. Are you on the SWAT team itself?

7 A. I am not.

8 Q. Okay. Were you on the SWAT team?

9 A. No.

10 Q. Okay. So what is SRT?

11 A. It's basically -- it's just special response
12 team. So it falls under -- under the umbrella of SWAT
13 and the CNT.

14 Q. All right. So the crisis negotiation team is
15 part of the SRT team that falls under SWAT; is that
16 right?

17 A. Correct.

18 Q. Okay. And when did you first become a part of
19 the SRT team?

20 A. Again, maybe 15 years ago.

21 Q. Okay. It was shortly after you took the crisis
22 negotiation training?

23 A. Correct.

24 Q. Okay. So tell me, what was involved? How long
25 was the training that you took, the crisis negotiation

1 training?

2 A. I believe it was two weeks.

3 Q. Okay. And was it two weeks every day, like
4 five days a week?

5 A. Yes.

6 Q. All right. And was it like a full day each of
7 those days, nine to five?

8 A. It was a 40-hour week.

9 Q. Okay. So it's an 80-hour course?

10 A. Correct.

11 Q. And where did you take that?

12 A. I believe that was in San Diego.

13 Q. Okay. And I take it you were sponsored by your
14 department, by Richmond?

15 A. Yes.

16 Q. Okay. And what was the name of the group that
17 put it on?

18 A. It was the FBI.

19 Q. Okay. The Federal Bureau of Investigations,
20 right?

21 A. Yes, sir.

22 Q. Okay. Do you recall who the primary instructor
23 was?

24 A. I -- I do not know.

25 Q. Okay. And do you recall was it simply -- you

1 know, there's kind of a stereotype that I think people
2 think of, like a barricaded subject who might have
3 hostages and you're outside, whatever house they're in
4 with the hostages or building with the bullhorn and
5 trying to talk to them in that manner. I assume it was
6 far more complex and covered far more circumstances than
7 that, right?

8 MR. FINE: Vague. Overbroad.

9 THE WITNESS: It's -- it's one of the scenarios,
10 yes.

11 BY MR. NISENBAUM:

12 Q. Okay. That's one of the scenarios, but you were
13 trained in far more scenarios than that, right?

14 MR. FINE: Vague as to "far more."

15 THE WITNESS: That's correct.

16 BY MR. NISENBAUM:

17 Q. Sorry, I didn't get the answer.

18 A. That's correct.

19 Q. Okay. Can you roughly -- obviously, we don't
20 have 80 hours here, but can you just tell me the primary
21 principles that you were trained in?

22 MR. FINE: Just real quick. Vague. Overbroad.
23 Calls for a narrative.

24 Go ahead.

25 THE WITNESS: Just speaking to individuals,

1 showing empathy, trying to read body language, assessing
2 the totality of the circumstances, and then using
3 different tools to complete, you know, whatever
4 objective that we're trying to complete at that time.

5 BY MR. NISENBAUM:

6 Q. Okay. And is it fair to say that one of the
7 things you learned in the crisis negotiation training
8 was -- one of the primary factors to consider was the
9 immediacy of threat posed by the individual that you're
10 dealing with?

11 MR. FINE: Incomplete hypothetical. Vague and
12 overbroad.

13 THE WITNESS: Yes.

14 BY MR. NISENBAUM:

15 Q. And were you trained to try to do things like
16 create time, slow a situation down when you're dealing
17 with a person who is in crisis?

18 MR. FINE: Same objections.

19 THE WITNESS: Yes, we are.

20 BY MR. NISENBAUM:

21 Q. Okay. All right. And if they don't have a gun
22 to somebody's head or a weapon to their -- you know,
23 that can be used immediately against them, then you want
24 to do what you can to slow the situation down; is that
25 right?

1 MR. FINE: Same objections.

2 THE WITNESS: That's correct.

3 BY MR. NISENBAUM:

4 Q. Okay. And what is the reason that you've been
5 trained in why you want to slow it down?

6 MR. FINE: Same objections.

7 THE WITNESS: Well, if time was on our side, then
8 obviously, depending on the circumstances, you know, you
9 want to slow things down and try to speak with the
10 individual and provide aid if necessary.

11 BY MR. NISENBAUM:

12 Q. Right.

13 And part of the reason -- I mean, I've heard the
14 term "use time as an ally."

15 Have you heard that term?

16 A. I have.

17 Q. Okay. What does that mean to you?

18 A. Time is on our side. You know, there's no need
19 to rush into something if you don't need to rush into a
20 situation. Assessing the -- the totality of the
21 circumstances that -- that are given to you at that
22 time. Again --

23 Q. Go ahead. I didn't mean to cut you off.

24 A. No. Again, it all depends on the situation and
25 what's going on. So, yeah, if we -- if time is on our

1 side, then we try to utilize as much time as we can to,
2 you know, get this situation under control and make sure
3 everybody is safe.

4 Q. Okay. I take it one of the considerations of
5 that is that when you use force, the outcome of it can
6 be unpredictable and it can be more dangerous both for
7 the subject as well as for yourself; is that right?

8 MR. FINE: Incomplete hypothetical. Vague and
9 ambiguous. Overbroad.

10 THE WITNESS: That's correct.

11 BY MR. NISENBAUM:

12 Q. Okay. Whereas if you keep a situation static
13 using time, then you don't have to deal with --
14 necessarily with the outcomes -- the unpredictable
15 outcomes of the use of force, correct?

16 MR. FINE: Same objections.

17 THE WITNESS: Correct.

18 BY MR. NISENBAUM:

19 Q. Okay. Did you have a regular assignment at the
20 time of this incident as a crisis negotiator?

21 A. Yes. I was assigned a patrol.

22 Q. Okay. So in your specific assignment, did it --
23 your specific duties, did it include a crisis
24 negotiation component?

25 A. When called for, yes.

1 Q. Okay. Would you get special calls for it?

2 A. At times, yes.

3 Q. Okay. Were you called out to this scene as a
4 crisis negotiator?

5 A. I was not.

6 Q. Okay. In this incident, you were simply trying
7 to utilize your skills as a crisis negotiator during
8 parts of the incident, correct?

9 A. Not -- no, not initially. I responded to the
10 call because I heard my -- my partners were responding
11 to this call. So I responded but not as a crisis
12 negotiator.

13 Q. All right. I understand that.

14 My question was -- as I -- and I've watched all
15 the videos, so I know that you were trying to talk to
16 him and, you know, you were trying to utilize some of
17 your skills as a crisis negotiator during the incident.

18 Do I understand that correctly?

19 MR. FINE: Vague and ambiguous. Overbroad.

20 THE WITNESS: That is correct.

21 BY MR. NISENBAUM:

22 Q. Okay. You weren't called there specifically as a
23 crisis negotiator, though, right?

24 A. That is correct.

25 Q. Okay. That's what I thought. Thank you.

1 You were in full uniform?

2 A. I was.

3 Q. Okay. Well, in your training, do you have any
4 obligation -- when you observe an officer do something
5 that you think might be wrong under the circumstances,
6 do you have any obligation to intervene --

7 MR. FINE: Vague and ambiguous. Overbroad.

8 BY MR. NISENBAUM:

9 Q. -- either verbally or physically?

10 MR. FINE: My apologies.

11 Vague and ambiguous. Overbroad. Incomplete
12 hypothetical.

13 THE WITNESS: Yes.

14 BY MR. NISENBAUM:

15 Q. Okay. What obligations do you have? What's your
16 understanding?

17 MR. FINE: Same objections.

18 THE WITNESS: Well, if I see my partners doing
19 something egregious or would cause harm to a subject
20 that is unnecessary, it's -- it's my obligation to
21 prevent that officer or that individual from -- from
22 doing that or doing something that's egregious in -- in
23 my mind.

24 BY MR. NISENBAUM:

25 Q. In the course of your career, have you ever

1 actually done that?

2 A. No.

3 MR. FINE: Vague as to "done that."

4 BY MR. NISENBAUM:

5 Q. I'm sorry, I didn't get the answer.

6 A. No.

7 Q. Okay. Do you recall the time of day that this
8 happened with Mr. Gutzalenko?

9 A. I don't recall the exact time, but I -- I believe
10 it was early in the morning.

11 Q. Okay. How long had you been at work on your
12 shift?

13 A. I recall it was early in the morning, so not too
14 long.

15 Q. Okay. Were you assigned to work with a partner?

16 A. No.

17 Q. At that time, were any Richmond police officers
18 assigned to work with partners?

19 A. Not that I recall.

20 Q. Okay. You were each assigned a beat?

21 A. Yes.

22 Q. Okay. And you would patrol that beat. And if
23 there was a call for help, you would -- from another
24 officer, then you would respond to that; is that right?

25 A. Yes.

1 Q. Okay. All right. So you had a description of
2 who you later learned was Mr. Gutzalenko, right?

3 A. Yes.

4 Q. Okay. Do you recall whether or not there was any
5 description of him being incredibly sweaty or
6 excessively sweating?

7 A. I don't recall.

8 Q. When you observed him, did you notice whether he
9 was excessively sweating?

10 A. I don't recall if he was or not.

11 Q. At some point, I know you were hands-on with him.
12 I think you were at his legs; is that right?

13 A. Yes.

14 Q. Okay. Did you ever feel his skin?

15 A. I did not.

16 Q. Okay. Did you have any reason to believe that he
17 was -- that his skin temperature was excessively hot?

18 A. I -- I did not feel his skin.

19 Q. Okay. So you had no reason to believe, from your
20 observations, that his skin temperature was excessively
21 hot, correct?

22 MR. FINE: Asked and answered. Lacks foundation.

23 THE WITNESS: That's correct.

24 BY MR. NISENBAUM:

25 Q. Thank you. And I do appreciate you following the

1 question and answering.

2 A. Yeah. I'm sorry, this is the first time using
3 Zoom, so --

4 Q. Yeah. You know, sadly, we've all been doing it a
5 lot. It's very frustrating, but, you know, it's got to
6 be Zoom. It's better than nothing.

7 A. I understand.

8 Q. Yeah.

9 Okay. Did you have a sense of what you thought
10 you were responding to?

11 MR. FINE: Vague and ambiguous. Overbroad.

12 THE WITNESS: I did.

13 BY MR. NISENBAUM:

14 Q. Okay. What was that sense?

15 A. Subject having a medical emergency. Possibly
16 5150 or having a -- a mental health crisis. So that was
17 my understanding while I was en route to that call.

18 Q. Okay. Is it fair to say that your understanding
19 of that never changed once you observed him? It was
20 consistent with that understanding?

21 A. I would say safe to say so, yes.

22 Q. Okay. All right. Were you present when he was
23 saying that he was having difficulty breathing?

24 A. I don't necessarily recall him saying that he was
25 having difficulty breathing.

1 Q. Do you recall anyone at the scene telling you
2 that he had been saying that?

3 A. No.

4 Q. Is that something that, as a Richmond police
5 officer, you're trained to consider in how you respond
6 to and use force against the person?

7 MR. FINE: Incomplete hypothetical. Overbroad.

8 THE WITNESS: Yes.

9 BY MR. NISENBAUM:

10 Q. Okay. All right. So about how long did it take
11 you after you got the call to actually arrive at the
12 scene?

13 A. I would say maybe five, maybe ten minutes.

14 Q. Okay. And were you keeping track of the updates
15 on the incident on the CAD?

16 A. I was keeping track just by radio traffic.

17 Q. Okay. Just by listening?

18 A. That's correct, yes.

19 Q. Okay. And I know you gave me some of the updates
20 that you heard.

21 Was there anything else that you recall that was
22 significant?

23 A. Not that I recall, no.

24 Q. Okay. It all just kind of confirmed to you that
25 this was a person who was having either a mental health

1 crisis compounded potentially by some physical condition
2 based on the puking.

3 Is that fair to say?

4 A. Yes.

5 Q. Okay. And I assume you thought that you had some
6 good skills you could bring to the situation as a crisis
7 negotiator?

8 MR. FINE: Asked and answered. Vague and
9 ambiguous.

10 THE WITNESS: Yes, that's correct.

11 BY MR. NISENBAUM:

12 Q. Okay. Was there a senior officer at the scene,
13 like somebody that would have been the, for lack of a
14 better term, incident commander, incident leader?

15 A. Well, there was a more senior officer than me
16 that was on scene, yes.

17 Q. Okay. Who was that?

18 A. That would have been Officer Hall.

19 Q. Okay. And how it works at Richmond Police
20 Department, is that the first responding officer who has
21 control of the scene, or is it the most senior officer?

22 MR. FINE: Assumes facts. Vague as to "control
23 of the scene." Overbroad.

24 THE WITNESS: So the primary officer would be
25 the -- whichever beat the incident occurred. In this

1 case, it occurred in beat 7, which Officer Tran was
2 assigned to beat 7. So he would have been the person in
3 charge of handling that call. He would have been the
4 primary officer.

5 BY MR. NISENBAUM:

6 Q. Okay. So as you're responding to the scene,
7 what's your first observation of Mr. Gutzalenko?

8 A. My first observation upon arriving to the scene
9 is I observed Officer Tran trying to speak to
10 Mr. Gutzalenko.

11 Q. And how was Mr. Gutzalenko positioned at that
12 time?

13 A. He was standing, and he was in front of Officer
14 Tran.

15 Q. Okay. Now, I know in your interview, you
16 referred to Officer Tran as, I think, kind of a big boy?

17 A. Officer Tran is pretty big for -- for his
18 stature, yes.

19 Q. Do you have an estimate of height and weight?

20 MR. FINE: Calls for speculation. Lacks
21 foundation.

22 THE WITNESS: I believe Officer Tran is maybe
23 five-eight, probably close to 200 pounds.

24 BY MR. NISENBAUM:

25 Q. And is that a strong 200 pounds, a chubby

1 200-pound, or some of both?

2 MR. FINE: Vague. Overbroad. Lacks foundation.
3 Calls for speculation.

4 THE WITNESS: I would say both.

5 BY MR. NISENBAUM:

6 Q. Okay. And Officer Hall was there too?

7 A. Yes.

8 Q. And what was Officer Hall doing?

9 A. Officer Hall was standing next to, I believe,
10 Officer Tran.

11 Q. Okay. Did it seem like there was one person who
12 was one officer who was talking to Mr. Gutzalenko?

13 A. Yes.

14 Q. Okay. And that would have been Tran?

15 A. That's correct.

16 Q. Okay. And did it appear that Mr. Gutzalenko was
17 armed in any way?

18 A. No, it -- it didn't appear so.

19 Q. Okay. Now, the term "5150," what does that mean?

20 A. Somebody who's having a mental crisis.

21 Q. Okay. In your training, when a 5150 is being
22 conducted, is the person -- is the subject of the 5150
23 free to leave? Can they just walk away from it?

24 A. No.

25 MR. FINE: Vague as -- sorry. Vague as to "5150

1 being conducted."

2 Go ahead.

3 THE WITNESS: No.

4 BY MR. NISENBAUM:

5 Q. Okay. And a 5150, can you tell me what the
6 definition is?

7 A. Somebody who is a danger to himself or others.

8 Q. And that's Welfare and Institutions Code 5150?

9 A. Yes.

10 Q. And if it is determined by the officers, you
11 know, by their investigation -- well, strike that.

12 A 5150 is a law enforcement detention, correct --

13 MR. FINE: Calls for expert testimony.

14 BY MR. NISENBAUM:

15 Q. -- based on your training?

16 A. Based on my training, correct.

17 Q. Right.

18 And that's true because they're not free to
19 leave, right?

20 A. Correct.

21 Q. Okay. And then when a person -- if an officer
22 decides that the person is a danger to themselves or
23 others or otherwise unable to care for themselves due to
24 a mental disability, then what happens?

25 MR. FINE: Incomplete hypothetical.

1 MR. KANTER: Join.

2 THE WITNESS: Well, they're not free to leave.
3 And obviously, we need to render aid.

4 BY MR. NISENBAUM:

5 Q. Okay. Does that mean that you take them to,
6 like, a psychiatric hospital?

7 MR. FINE: Same objection.

8 MR. KANTER: Join.

9 BY MR. NISENBAUM:

10 Q. Do they go to an ER? What happens?

11 MR. FINE: Same objection.

12 MR. KANTER: Join.

13 THE WITNESS: Well, we would call medical, we'll
14 call for an ambulance, and then we would fill out the
15 necessary paperwork so they can be admitted to a psych
16 ward or, again, to a county hospital.

17 BY MR. NISENBAUM:

18 Q. Okay. If they don't have any apparent physical
19 problems, then would they go typically to a psych ward?

20 MR. FINE: Incomplete hypothetical.

21 THE WITNESS: Yes. Correct.

22 BY MR. NISENBAUM:

23 Q. Okay. And if they do have physical medical
24 problems or apparent physical medical problems, then
25 would they go to an ER before they go to a psych ward,

1 typically?

2 MR. FINE: Same objection.

3 MR. KANTER: Join.

4 THE WITNESS: Yes. Typically, yes.

5 BY MR. NISENBAUM:

6 Q. Okay. And who's in charge of the transportation?

7 MR. FINE: Vague. Overbroad. Incomplete
8 hypothetical.

9 MR. KANTER: Join.

10 THE WITNESS: That would be the ambulance, AMR.

11 BY MR. NISENBAUM:

12 Q. And is an officer required to be present? Like,
13 if they go to the hospital, does an officer have to be
14 there?

15 MR. FINE: Same objections.

16 MR. KANTER: Join. Calls for expert opinion.
17 Incomplete hypothetical. Overly broad. Vague and
18 ambiguous.

19 MR. FINE: Join.

20 BY MR. NISENBAUM:

21 Q. I'm asking you based on your understanding of
22 Richmond Police Department policy and training and your
23 experience.

24 MR. FINE: Same objections.

25 MR. KANTER: Join.

1 THE WITNESS: Yes, at times.

2 BY MR. NISENBAUM:

3 Q. Okay. What's the criteria? When wouldn't the
4 officer have to be there?

5 MR. FINE: Same objections.

6 MR. KANTER: Join.

7 THE WITNESS: I'm sorry, repeat the question.

8 BY MR. NISENBAUM:

9 Q. When wouldn't an officer have to be there?

10 MR. FINE: Same objections.

11 MR. KANTER: Join.

12 THE WITNESS: Well, if a medical personnel
13 doesn't request us accompany them or if it's a situation
14 where medical personnel has everything under control.

15 BY MR. NISENBAUM:

16 Q. Okay. All right. So if it's felt by the officer
17 that it appears like the person would -- still would
18 require some sort of physical control, then the officer
19 would accompany them; is that right?

20 MR. FINE: Same objections.

21 MR. KANTER: Join.

22 THE WITNESS: That's correct.

23 BY MR. NISENBAUM:

24 Q. Okay. All right. I assume you've had experience
25 in the field where paramedics have given subjects who

1 are being detained or 5150s medication in the field; is
2 that correct?

3 A. That's correct.

4 Q. Okay. How many times has that happened when
5 you've been present by estimation?

6 A. I'd say numerous times. I don't know if I could
7 put a number on it, but I would say over 50, maybe over
8 a hundred times throughout my career.

9 Q. All right. And have you assisted in restraining
10 subjects while the paramedics give an injection to calm
11 them down?

12 MR. FINE: Vague. Overbroad.

13 THE WITNESS: If necessary, yes.

14 BY MR. NISENBAUM:

15 Q. Okay. And I think it was you who called it a
16 calm-me-down -- a calm-me-down med or a calm-down med.

17 Is that the term that you use for it?

18 A. Yes, because I didn't know the exact medical term
19 or what they gave them at the time.

20 Q. Is that a common vernacular at Richmond Police
21 Department when you talk amongst other officers, you
22 know, the calm-down drug or the calm-me-down?

23 A. I wouldn't say it's something that most officers
24 use. It's just what I use because I don't know the
25 medical term -- terminology for the medication.

1 Q. All right. And, of course, I take it you're not
2 trained to actually give the medication yourself, right?

3 A. That -- that's correct. We would never
4 administer any type of a medication to a subject.

5 Q. So prior to this lawsuit, had you ever heard the
6 word "Versed"?

7 A. Yes.

8 Q. Okay. You knew that Versed is a sedative drug
9 that is administered in the hospital, I take it?

10 MR. FINE: Calls for expert testimony.

11 MR. KANTER: Join.

12 THE WITNESS: Yes.

13 BY MR. NISENBAUM:

14 Q. Okay. And did you know that Versed was being
15 administered in this case with Mr. Gutzalenko?

16 MR. FINE: Vague as to time.

17 THE WITNESS: No. I didn't know what they were
18 giving Mr. Gutzalenko.

19 BY MR. NISENBAUM:

20 Q. All right. And we'll go through your body cam
21 video, but at some point, you know, the paramedic does
22 say that he's going to draw up some Versed. So I take
23 it you didn't hear that; or if you heard it, it didn't
24 register.

25 Is that fair to say?

1 A. Yes.

2 MR. FINE: Compound.

3 BY MR. NISENBAUM:

4 Q. Have you ever been given Versed?

5 MR. FINE: Vague.

6 THE WITNESS: I believe I -- I was given that
7 when I had my surgery.

8 BY MR. NISENBAUM:

9 Q. It's nasty.

10 (Reporter clarification.)

11 MR. FINE: Just vague.

12 BY MR. NISENBAUM:

13 Q. I've had it too. It is not pleasant.

14 The other one, Diprivan, is much easier in my
15 experience.

16 A. Yeah. Well, whatever they gave me, I didn't feel
17 any pain, so it worked for me.

18 Q. Did you have a horrible hangover afterwards?

19 MR. FINE: Relevance. It's invading his privacy
20 as to medical stuff that has no relevance to this case.

21 THE WITNESS: Not that I recall.

22 BY MR. NISENBAUM:

23 Q. Okay. I did. And I was also awake through the
24 procedure. It didn't even put me all the way out. It
25 was not pleasant. Anyway.

1 All right. I take it you were not aware of any
2 of the warnings that come with Versed, like the FDA
3 warnings?

4 MR. FINE: Calls for expert opinion. Vague and
5 ambiguous. Overbroad.

6 BY MR. NISENBAUM:

7 Q. I'm just asking your familiarity.

8 MR. FINE: Same objections.

9 THE WITNESS: I am not familiar with any of the
10 warnings that come along with the -- the administration
11 of the Versed.

12 BY MR. NISENBAUM:

13 Q. And I take it you are familiar that when you get
14 a medication that is typically by prescription, if there
15 are warning labels on them, you are supposed to read
16 them, right?

17 MR. FINE: Relevance. Overbroad. Vague and
18 ambiguous.

19 THE WITNESS: Again, I'm -- I'm not a medical
20 professional, so --

21 BY MR. NISENBAUM:

22 Q. I'm asking a matter of common sense.

23 A. Well, common sense, I mean, I'm not administering
24 that stuff to myself, so --

25 Q. Right.

1 A. -- you know --

2 Q. You relied on the medical professional who
3 administered it to know what they're doing, right?

4 A. Correct.

5 Q. Okay. And if you thought that what was being
6 done was something that was, in fact, under these
7 circumstances, highly dangerous, you would have had a
8 duty to intervene, correct?

9 MR. FINE: Misstates prior testimony. Vague and
10 ambiguous. Overbroad. Incomplete hypothetical. Calls
11 for expert opinion.

12 THE WITNESS: Again, I'm not a medical
13 professional, so I -- again, I don't know how to answer
14 that question. That's not in my job description to
15 administer those types of drugs or -- or whatnot.

16 BY MR. NISENBAUM:

17 Q. Okay. Now, at some point, you obtained
18 Mr. Gutzalenko's identification, correct?

19 A. I don't recall if I actually had his physical ID.

20 Q. Do you recall Officer Hall handing you the
21 identification to run?

22 A. I believe -- yeah. Now that you talk about it, I
23 believe that Officer Hall did eventually give me his ID,
24 and that's something that I probably would have done,
25 yes.

1 Q. And you then handed that identification to AMR
2 personnel at the scene -- or AMR West, the paramedics at
3 the scene, right?

4 A. Correct.

5 Q. Okay. Did you actually run his identification?

6 MR. FINE: Vague.

7 THE WITNESS: I -- I don't recall.

8 BY MR. NISENBAUM:

9 Q. Okay. So I'm going to read from your interview.
10 I can pull it up if you want, but that will take more
11 time than I think is needed. I'm just going to read.
12 And let me know if this refreshes your recollection.
13 And this is from Bates stamp City_01436. It's page 7 of
14 your interviews, starting at the top, line 1. I'm
15 starting with your answer.

16 The answer, "So at that time, when I get up
17 there, Officer," in parenthesis, "Hall," close
18 parenthesis, "gives me his ID, asked me to run the guy
19 out in our record system --

20 "Q. Uh-huh.

21 "A. -- which he comes back clear. He also says,
22 'Be careful because there's blood' -- 'there's probably
23 blood on there' because he was describing that the guy
24 had blood on his hands and he was spitting blood."

25 Does that refresh your recollection that you

1 actually ran his ID and he came back clear?

2 A. Yes. Now that you read it, yes.

3 Q. Okay. And your information was that he was
4 spitting blood. Officer Hall told you that?

5 A. I believe so.

6 Q. Okay. Did you actually see blood coming out of
7 Mr. Gutzalenko's mouth?

8 A. I -- I believe there was evidence of, like, dry
9 blood or something. There was evidence that he had
10 puke, and there was, I believe, dry blood on the side of
11 his mouth.

12 Q. Okay. I'm going to continue. This is at line 10
13 of the same page.

14 "Q. Okay."

15 Answer by you, "Um and something about having
16 dried up on it or something like that. At that time,
17 AMR shows up, and I go over to AMR. I say, 'Hey, you
18 might want to get a spit hood or something like that
19 because this guy is spitting or coughing up blood.' And
20 I asked. I hand them the ID."

21 Does that refresh your recollection that you did
22 hand AMR the ID?

23 MR. FINE: Asked and answered.

24 THE WITNESS: Yes.

25 ///

1 BY MR. NISENBAUM:

2 Q. Okay. And that -- do you recall now telling AMR
3 that they might want to get a spit hood because the
4 person, the subject, was spitting or coughing up blood?

5 A. Yes.

6 Q. Okay. Do you know which paramedic or which AMR
7 personnel -- it's the paramedic, the EMT, might be the
8 right word. I don't know.

9 Do you know which person you said that to, "This
10 guy is spitting or coughing up blood"?

11 A. I don't recall. I -- I think I just made a
12 general statement to whoever was sitting in the back of
13 AMR.

14 Q. Did you recognize any of the AMR personnel at the
15 scene as people you had dealt with before?

16 A. I don't recall, but usually, I always run into
17 the same ones.

18 Q. Okay. Do you know who Damon Richardson is?

19 A. I do not.

20 Q. Okay. All right. Now, after you gave AMR the
21 ID, do you recall what happened next?

22 A. I believe AMR personnel, EMTs walked over to
23 Mr. Gutzalenko.

24 Q. Okay. And do you know what -- did you see what
25 they did?

1 A. As far as what -- what you are asking, sir?

2 Q. Well, did you see them administer any treatment
3 to Mr. Gutzalenko at that time when they walked over to
4 him?

5 MR. FINE: Vague. Overbroad.

6 THE WITNESS: Yes.

7 BY MR. NISENBAUM:

8 Q. Okay. What did you see?

9 A. They gave him the medication.

10 Q. Okay. Are you talking about -- well, let me --
11 let's take this blow by blow, frame by frame in
12 sequence. And I can refresh your recollection with your
13 interview. Let me start with that.

14 This is reading from the same page, City_01436.
15 Picking up where I left off after you said, "I hand them
16 the ID." So it's line 15.

17 "So as I go back over to assist Hall and Tran, I
18 noticed that there's" -- "now the" -- "the guy is
19 struggling a little more and Hall is trying to control
20 his arm, his left arm. Tran is trying to control him on
21 the right side and trying to tell the guy to calm down.
22 I come over to his feet because the subject was kicking.
23 Right. So" --

24 "Q. Uh-huh.

25 "A. Obviously, I control his feet by just

1 putting -- pushing some weight on his -- on his ankles
2 and calves to prevent him kicking. I see Officer Hall
3 at this time who I have holding the subject's left
4 hand --

5 "Q. Uh-huh.

6 "A. -- and trying to put cuffs on his -- on his
7 hand just so now that we have more leverage to control
8 him. Officer Tran, again, is trying to control him
9 because he's kind of flailing around. He is trying to
10 grab his right hand. The subject is still being
11 actively resisting, trying to keep his hand underneath
12 them. We're all trying to say, 'Hey, calm down. Calm
13 down. Calm down. You know, they've got the medic' --
14 'medics here. They're going to help you' -- 'help you
15 out and whatnot.' Medics show up to bring this -- the
16 gurney. You know, at the time, he's still trying to be
17 a little combative. I noticed that the paramedics
18 use -- they injected him with some calm-me-down serum.
19 I don't know exactly what it's called."

20 Does that refresh your recollection as to the
21 sequence of events?

22 A. It does.

23 Q. Okay. Do you recall if a paramedic initially
24 went to -- or EMT initially went to check on
25 Mr. Gutzalenko then left and then came back with

1 medication?

2 A. I don't necessarily recall exactly what they --
3 they did while we were trying to control Mr. Gutzalenko.

4 Q. Okay. I take it you were focused on controlling
5 Mr. Gutzalenko, and you were focused on his legs
6 primarily; is that right?

7 A. That's correct.

8 Q. Okay. Did you see the actual injection?

9 A. I believe I did, yes.

10 Q. Okay. All right. And we actually have it on
11 your body cam. We have a good view of it, and we'll get
12 to it.

13 Now, I know from your body cam, the only thing
14 you were doing, it looked like, was just controlling the
15 legs at the time that the injection was given, correct?

16 A. Correct.

17 Q. You didn't move any part of Mr. Gutzalenko's
18 clothing to facilitate the injection, did you?

19 A. I did not.

20 Q. Okay. Did you see Officer Tran do that?

21 A. I -- I don't recall. I was focused more on the
22 legs.

23 Q. Did you see anyone do that?

24 A. Again, I -- I don't recall.

25 Q. Okay.

1 THE REPORTER: Mr. Nisenbaum, are you marking
2 that document as an exhibit? This was on your --

3 MR. NISENBAUM: Might as well. I did submit it.
4 We'll mark it as Exhibit A.

5 I did submit it to the court reporter, so we'll
6 make that Exhibit A.

7 THE REPORTER: Okay.

8 MR. NISENBAUM: Thank you.

9 (Exhibit A marked.)

10 BY MR. NISENBAUM:

11 Q. All right. Now, as I understand your statement,
12 you noticed that Mr. Gutzalenko started to turn blue
13 shortly after the paramedic gave him the calm-me-down
14 serum; is that correct?

15 A. That's correct.

16 Q. Okay. About how long after the serum was given
17 did you notice that Mr. Gutzalenko was starting to turn
18 blue?

19 A. It was shortly after they administered the
20 injection.

21 Q. Okay. In your statement, it says -- and I'm just
22 picking up where I left off. Let's get the question,
23 which was -- so the -- you pick up at line 43 of the
24 same page.

25 "A. Um, I notice that after that, as we're

1 trying to get him on the gurney or whatnot, his face is
2 blue. And I say, 'Hey, man.' I go, 'Is this man coding
3 out? Right? Because his face is blue.' And that --
4 that time, I think they realized that this guy is having
5 some type of medical issue. And they immediately
6 started, um, doing lifesaving measures and CPR on the
7 guy.

8 "Q. Okay. And they get him into the ambulance?

9 "A. Yes."

10 That goes on to the next page, ending at line 6.

11 Is that your recollection of the sequence of
12 events?

13 A. It is.

14 Q. Okay. So you noticed that he was turning blue
15 and you thought he was coding before he was put in the
16 ambulance?

17 A. That's correct.

18 Q. Okay. And you saw them start doing CPR before he
19 was put in the ambulance?

20 A. I believe so.

21 Q. Okay. Do you recall what the paramedics told you
22 at the scene about why they were doing CPR or what
23 happened?

24 A. I -- I don't recall what they -- they stated.

25 Q. Do you recall if they told you what had happened?

1 A. I -- I do not recall.

2 Q. Okay. Do you recall any conversation you had
3 with them?

4 A. I -- I don't recall having a conversation. I
5 know they were focused on trying to revive
6 Mr. Gutzalenko at that time.

7 Q. Right.

8 Okay. I'm going to share my screen, and I'm
9 sharing your body cam video. This is a file titled
10 "Officer Tagorda confidential city
11 839.confidential.MP4."

12 MR. NISENBAUM: Counsel, do I need to go under
13 seal when asking questions about this? The exhibit
14 itself will remain confidential, but I think I could ask
15 him questions without going under seal.

16 Fair enough?

17 MR. FINE: I mean, until I hear the questions,
18 it's kind of hard to give an answer. I think it's
19 probably fine. If I have an issue with a question, then
20 I'll raise it.

21 MR. NISENBAUM: Okay. Thank you.

22 THE REPORTER: And this is Exhibit B?

23 MR. NISENBAUM: Yes.

24 (Exhibit B marked.)

25 ///

1 BY MR. NISENBAUM:

2 Q. Okay. Can you see the screen?

3 A. I can, yes.

4 Q. Okay. Let me go back to zero.

5 I take it that's your hand we're looking at?

6 A. I would assume so, yes.

7 Q. Okay. I'm going to hit play, and I'll pause
8 where I have questions and then resume.

9 Okay. Pausing at 24 seconds. That's you putting
10 your gloves on and then taking Mr. Gutzalenko's
11 identification, correct?

12 A. Correct.

13 Q. Okay. And that's Mr. Gutzalenko who's on the
14 ground?

15 A. It is.

16 Q. Okay. And that's Officer Tran who's standing
17 over him, correct?

18 A. Correct.

19 Q. Okay. And at this point, this is a 5150,
20 correct?

21 MR. FINE: Vague and ambiguous. Overbroad.
22 Calls for expert testimony.

23 MR. KANTER: Join. Lacks foundation.

24 MR. FINE: Join.

25 THE WITNESS: Well, I -- I can't really say

1 exactly if he was 5150, but that was the assumption at
2 the time.

3 BY MR. NISENBAUM:

4 Q. Okay. Picking up at 24 seconds.

5 Then at 41 seconds, someone said, "Hey, we'll
6 deal with you in a minute."

7 Do you know who that was?

8 A. It sounded like it was me.

9 Q. I thought so.

10 Do you know who you were talking to?

11 A. I -- I believe it was just a -- a bystander who
12 was trying to walk by.

13 Q. Okay. All right. Continuing at 41 seconds.

14 Pausing at 1:03. That was your voice relaying
15 Mr. Gutzalenko's name and other information to dispatch,
16 correct?

17 A. That's correct.

18 Q. Okay. Continuing at 1:03.

19 Pausing at 1:22. You asked a question, "Where is
20 he bleeding from, his hand?"

21 And the other officer -- I think it was Hall who
22 said, "He was" -- "it was coming out of his mouth. It's
23 bleeding when he spits," something like that?

24 A. That's correct.

25 Q. Okay. Continue at 1:22. Let me pause at 1:24.

1 It's pretty clear at that time that this was a medical
2 emergency then; is that right?

3 A. I would say it's safe to say so, yes.

4 Q. Okay. And that's because a person who's spitting
5 up blood is -- got to be -- that indicates a medical
6 emergency, correct?

7 MR. FINE: Calls for expert opinion. Vague and
8 ambiguous. Incomplete hypothetical.

9 THE WITNESS: That's correct.

10 BY MR. NISENBAUM:

11 Q. Okay. Continuing at 1:24.

12 We're at 1:34. Mr. Gutzalenko is moving a bit.

13 Someone is telling him to relax.

14 Is that you?

15 A. It sounded like me, yes.

16 Q. Okay. And obviously, the concern right now is
17 for his medical condition, correct?

18 A. Correct.

19 Q. Okay. Continuing at 1:34.

20 We're pausing at 1:58 now. The paramedic has
21 arrived. The ambulance has arrived. And I think that's
22 an ambulance.

23 Is that an ambulance?

24 A. Yes.

25 Q. Okay. And the passenger got out. And you were

1 kind of updating him on the fact that Mr. Gutzalenko is
2 spitting up blood and they might need a spit hood,
3 correct?

4 A. Correct.

5 Q. Okay. Continuing at 1:58.

6 Pausing at 2:05. You also gave the background
7 that he had been destroying a store and was probably
8 intoxicated as well, correct?

9 A. Correct.

10 Q. Okay. Continuing at 2:05.

11 Let me pause it at 2:53. Okay. So we're paused
12 at 2:53. I clicked the wrong button there. The screen
13 went off for a moment. It's because I clicked the wrong
14 button.

15 But in any event, whose car did you get in to
16 move?

17 A. Looks like my car.

18 Q. Okay. And why were you moving your car?

19 A. If I moved it, it's probably just to bring it
20 closer to the scene.

21 Q. Okay.

22 MR. FINE: Belatedly calls for speculation.

23 BY MR. NISENBAUM:

24 Q. Mr. Gutzalenko was not struggling so badly that
25 he required at this time multiple officers restraining

1 him, correct?

2 MR. FINE: Vague and ambiguous. Overbroad.

3 THE WITNESS: Correct.

4 BY MR. NISENBAUM:

5 Q. Okay. Continuing at 2:53.

6 So pausing at 3:28. You got out of the car, and
7 you're walking back to where Mr. Gutzalenko was,
8 correct?

9 A. That's correct.

10 Q. And a paramedic had gotten the stretcher out of
11 the ambulance to take to where Mr. Gutzalenko was,
12 correct?

13 A. That's correct.

14 Q. Continuing at 3:28.

15 Again, I say paramedic, but I meant EMT. And you
16 could see that on his back of his shirt, I think.

17 Continuing at 3:34.

18 Pausing at 4:06. There was the sound of
19 someone's voice trying to yell in a somewhat muffled
20 way, but it sounds like, you know, they're protesting or
21 something.

22 Do you know whose voice that was?

23 MR. FINE: Calls for speculation.

24 THE WITNESS: I -- I don't know based on that --
25 on the video.

1 BY MR. NISENBAUM:

2 Q. If based on your recollection, do you know?

3 A. I do not.

4 Q. Okay. Continuing at 4:06.

5 I'm going to go back just a shade.

6 Okay. We're paused at 4:10.

7 And were you able to tell now that's
8 Mr. Gutzalenko's voice who appears to be protesting his
9 treatment?

10 MR. FINE: Same objection.

11 THE WITNESS: I can't distinguish if that's his
12 voice. It sounds like Officer Tran and Hall are --
13 were -- were trying to say something. I -- I can't make
14 it out.

15 BY MR. NISENBAUM:

16 Q. Okay. All right. And were you able to see that
17 Officer Tran had put his knee on Mr. Gutzalenko's back
18 area?

19 MR. FINE: Misstates the video.

20 THE WITNESS: I can't tell based on the frame of
21 the video exactly where the knee is at.

22 BY MR. NISENBAUM:

23 Q. Right from here, we just have an inference of
24 where it's at.

25 Is that fair to say, his left knee?

1 MR. FINE: Calls for speculation. Vague and
2 ambiguous. Misstates the video. Lacks foundation.

3 THE WITNESS: I would say it's in the general
4 area of his back.

5 BY MR. NISENBAUM:

6 Q. Okay. Thank you.

7 4:11, continuing.

8 Pausing at 4:03. You heard a voice say, "Why are
9 you doing this to me?" That was Mr. Gutzalenko,
10 correct?

11 A. I believe so, yes.

12 Q. Okay. All right. And Officer Hall has him in --
13 is that an arm bar?

14 MR. FINE: Vague as to "arm bar."

15 THE WITNESS: It appears that he's controlling
16 his -- his arm.

17 BY MR. NISENBAUM:

18 Q. His left arm, correct?

19 A. Appears to be his left arm, yes.

20 Q. Okay. And is that that you controlled in a
21 manner that you're -- that you -- are you familiar with
22 the term "arm bar"?

23 A. I am.

24 Q. Okay. What is that?

25 A. It's where you straighten out the arm and you put

1 it in a position where they can't move it.

2 Q. And is that what it appears that Officer Hall is
3 doing there? We're at 4:33.

4 A. It appears that he is in the process or
5 attempting to put the subject or Mr. Gutzalenko in
6 that -- in that position.

7 Q. Okay. Continuing at 4:33.

8 I'll go back just a shade.

9 All right. We're paused at 4:39. You can now
10 see where Officers Tran's knee -- where Officer Tran's
11 knee is located, correct?

12 A. Correct.

13 Q. Okay. And it's kind of roughly in the diaphragm
14 area of Mr. Gutzalenko's back, correct?

15 MR. FINE: Misstates the video. Calls for expert
16 opinion. Lacks foundation.

17 THE WITNESS: Well, the -- the diaphragm is
18 located in the front. It appears his left knee is
19 upper -- upper back of Mr. Gutzalenko.

20 BY MR. NISENBAUM:

21 Q. You call that the upper back?

22 A. Middle of the back.

23 Q. Middle of the back. Okay. Fair enough. The
24 middle of his back.

25 Okay. 4:39, continuing.

1 I'm going to pause it at 5:01. You've obviously
2 moved down to Mr. Gutzalenko's feet and legs, correct?

3 A. Correct.

4 Q. Okay. And what were you doing?

5 A. At that time, I believe I was trying to control
6 his legs.

7 Q. Okay. What were you doing to try to control his
8 legs?

9 A. I believe I was holding down his ankles and the
10 calf area, lower legs just to prevent him from kicking
11 and trying to keep him in that recovery position.

12 Q. And did you have one foot crossed over the other
13 or at the ankles?

14 A. What I would do to try to control someone's legs.

15 Q. Which is?

16 A. I would cross them and -- and then try to hold
17 one of the legs down.

18 Q. Okay. You might have broken up there because I
19 didn't hear the first few words of that, but that's
20 fine.

21 All right. We're at 5:01.

22 Paused at 5:08. Someone said, "You're going to
23 get tased. Then you better listen to us. Now, you want
24 to get tased?"

25 Do you know who said that?

1 A. That sounds like Officer Hall.

2 Q. Okay. Now, Mr. Gutzalenko is effectively under
3 control, right?

4 MR. FINE: Vague and ambiguous. Calls for expert
5 opinion. Lacks foundation.

6 THE WITNESS: Well, if Mr. Gutzalenko is still
7 actively resisting, I wouldn't say he was under control.
8 BY MR. NISENBAUM:

9 Q. Well, you had an officer who has him in, you
10 know, what appears to be an arm bar with the left arm.
11 The right arm, I think, is kind of under his body. You
12 have an officer who's got his knee in his -- in the
13 middle of his back, and you've got him at the legs.

14 Where is the lack of control?

15 MR. FINE: Asked and answered. Misstates the
16 video. Vague and ambiguous.

17 THE WITNESS: Well, as I stated, he was still
18 actively resisting, so I wouldn't say he was under
19 control.

20 BY MR. NISENBAUM:

21 Q. What does that mean, "actively resisting"?

22 A. Mr. Gutzalenko was still flailing around, kicking
23 his legs, preventing us from, you know, trying to render
24 aid to him.

25 Q. Okay. Well, you had his legs crossed over each

1 other. You were holding his legs down. It wasn't like
2 he was wildly kicking them, right?

3 MR. FINE: Misstates testimony. Asked and
4 answered.

5 THE WITNESS: Again, he was still actively
6 resisting. If I were to let go of his legs, he would
7 have continued kicking.

8 BY MR. NISENBAUM:

9 Q. Well, I got that, but you didn't. So he wasn't
10 kicking. You were preventing him from doing that,
11 right?

12 A. Correct.

13 Q. Okay. Did he ever try to punch anyone?

14 A. Not that I recall.

15 Q. Did he ever try to assault anyone or batter
16 anyone?

17 MR. FINE: Vague and ambiguous. Overbroad.
18 Calls for speculation as to his intent.

19 BY MR. NISENBAUM:

20 Q. From what you could observe.

21 MR. FINE: Same objections.

22 THE WITNESS: Not that I recall.

23 BY MR. NISENBAUM:

24 Q. Okay. All right. Continuing at 5:08.

25 Pausing at 5:11. It looks like you can tell the

1 shin of Officer Tran is pressed against either the
2 mid-back or just under the rib cage and left side of
3 Mr. Gutzalenko's body, correct?

4 MR. FINE: Misstates the video. Vague and
5 ambiguous.

6 THE WITNESS: It appears so.

7 BY MR. NISENBAUM:

8 Q. Okay. All right. Do you know if he, during the
9 time since I showed it to you, I think, at 4:10 -- well,
10 in any event, do you know if he ever -- during the time
11 that we've talked about, if he had ever moved his knee
12 or leg off of that part of Mr. Gutzalenko's body?

13 MR. FINE: Mischaracterizes the video. Calls for
14 speculation. Vague and ambiguous.

15 THE WITNESS: I believe so.

16 BY MR. NISENBAUM:

17 Q. Do you believe he did?

18 A. Yes.

19 Q. When?

20 A. Well, as soon as we got him, we got the gurney
21 close, and we could control him, I think that's when he
22 moved from that position.

23 Q. My question, up to this point, had he moved his
24 leg from that position, up to this point --

25 MR. FINE: Same objection.

1 BY MR. NISENBAUM:

2 Q. -- at 5:11?

3 MR. FINE: Same objections.

4 BY MR. NISENBAUM:

5 Q. That was my question.

6 MR. FINE: Same objections.

7 THE WITNESS: I don't recall based on just the
8 still frame of the video what he did after that or if it
9 moved from that position.

10 BY MR. NISENBAUM:

11 Q. I'm talking about from the video since I've
12 started showing it to you and identified where his knee
13 was in his back and where you could see it where you
14 testified that you thought it was up to now in the video
15 up to 5:11. So I think it was 4:10 to 5:11.

16 Were you able to -- do you recall if he had
17 gotten his leg off of his body, stopped pressing down?

18 MR. FINE: Mischaracterizes the video. Vague and
19 ambiguous. Calls for speculation.

20 THE WITNESS: Well, I think -- if I recall,
21 during this incident I think Officer Tran was trying to
22 keep him on the side, and his knee or leg or shin was in
23 different parts of his back during that time.

24 BY MR. NISENBAUM:

25 Q. Okay. So you think it moved a little bit?

1 MR. FINE: Same objections.

2 THE WITNESS: That's correct.

3 BY MR. NISENBAUM:

4 Q. Okay. But it was always in parts of his back,
5 correct?

6 MR. FINE: Same objections.

7 THE WITNESS: I would say correct.

8 BY MR. NISENBAUM:

9 Q. Okay. Continuing at 5:11.

10 Okay. We're at 5:24. You were saying, "I need
11 you to stay over there for now."

12 Who were you talking to?

13 A. I believe it was some bystander trying to walk
14 by.

15 Q. Okay. Continuing at 5:24.

16 We're pausing at 5:40. A voice just said, "I'm
17 going to get some Versed drawn up."

18 Did you hear that?

19 A. I did.

20 Q. Okay. Was that the EMT?

21 A. I believe so.

22 Q. Okay. So we're continuing at 5:40.

23 Now, let me ask you this: Does Richmond Police
24 Department have a policy -- have any policy whatsoever
25 when it comes to the administration of sedative

1 medication in the field that if a -- the paramedics want
2 to do it and you don't think the circumstances justify
3 it, that you tell them no?

4 MR. FINE: Vague and ambiguous. Calls for expert
5 testimony.

6 Go ahead.

7 THE WITNESS: There is no specific policy.

8 BY MR. NISENBAUM:

9 Q. Okay. Your training is to let the paramedics do
10 whatever they do because you assume that they know what
11 they're doing, right?

12 MR. FINE: Vague. Overbroad.

13 THE WITNESS: That's correct.

14 BY MR. NISENBAUM:

15 Q. Okay. 5:40, continuing.

16 I'll continue at 5:45. Paused it -- sorry,
17 paused it slightly early.

18 But did you hear that, "I don't" --
19 Mr. Gutzalenko said, "I can't breathe." And someone
20 said, "Pepper spray him"?

21 A. I heard that, "I can't breathe." I don't recall
22 hearing the pepper spray portion.

23 Q. I paused it too early. Let me go back to 6:23.
24 I'll hit play.

25 Pausing at 6:31.

1 Did you hear it there?

2 A. I did.

3 Q. Okay. Who said, "Pepper spray him"?

4 A. It sounds like Mark, Officer Hall.

5 Q. Okay. In your training, is it appropriate to
6 pepper spray someone who says that they're having
7 breathing problems and who has exhibited blood coming
8 out of their mouth and vomit?

9 MR. FINE: Incomplete hypothetical. Vague.
10 Overbroad.

11 THE WITNESS: Repeat the question, sir.

12 BY MR. NISENBAUM:

13 Q. Is it police department training and policy that
14 officers can pepper spray someone when the person is
15 saying that they can't breathe and they have had
16 physical signs consistent with that, including blood
17 coming out of their mouth and vomit?

18 MR. FINE: Same objections.

19 THE WITNESS: I don't think there's a specific
20 policy regarding the use of pepper spray. In this
21 incident, I believe Officer Hall was using a scare
22 tactic in order to try to get Mr. Gutzalenko to comply.

23 BY MR. NISENBAUM:

24 Q. Sure.

25 It was a ruse, right?

1 A. It appears so, yes.

2 Q. Okay. But you do know that pepper spray is an
3 irritant, a respiratory irritant, correct?

4 A. Correct.

5 Q. And you -- generally, you're supposed to avoid
6 using it against people who have difficulty breathing,
7 who are having breathing problems, right?

8 MR. FINE: Incomplete hypothetical. Overbroad.
9 Vague and ambiguous.

10 BY MR. NISENBAUM:

11 Q. It's one of the contraindications on it on the
12 can?

13 MR. FINE: Same objections. Calls for expert
14 testimony.

15 THE WITNESS: Well, the use of pepper spray,
16 again, it -- it all depends on the totality of the
17 circumstances, but it's a tool, an option that we do
18 have. And again, it would be up to the officer at the
19 time whether or not he wants to administer that or use
20 that option.

21 BY MR. NISENBAUM:

22 Q. Well, it may be a tool that you have. It's a
23 tool that is only permitted under certain circumstances,
24 correct?

25 MR. FINE: Vague. Overbroad.

1 THE WITNESS: There is no specific guideline as
2 far as when to administer or use pepper spray. Again,
3 it's up to the officer's judgment, but there's no strict
4 guidelines saying that we couldn't. But I think it's
5 just -- it would be common sense if somebody was -- had
6 some type of respiratory issue saying, in this instance,
7 they can't breathe, that would be an option that we
8 would use. And I don't think any reasonable officer
9 would use that. And again, in this situation, I think
10 Officer Hall was using that as a ruse, as you put it.

11 BY MR. NISENBAUM:

12 Q. Okay. We're continuing at 6:31. By the way,
13 6:33, you can see Officer Tran's knee. Although they're
14 in slightly different positions, it's still against his
15 back, correct?

16 MR. FINE: Misstates the video. Vague and
17 ambiguous.

18 THE WITNESS: I do show that Officer Tran's knee
19 is in contact with Mr. Gutzalenko's back, yes.

20 BY MR. NISENBAUM:

21 Q. Okay. Continuing at 6:33.

22 We're at 6:39. You can also see that it looks
23 like Officer Tran is leveraging his weight into the knee
24 that's on Mr. Gutzalenko's back, correct?

25 MR. FINE: Misstates the video. Calls for

1 speculation. Lacks foundation.

2 THE WITNESS: Correct. Sorry, that -- that's
3 correct.

4 BY MR. NISENBAUM:

5 Q. Okay. Thank you.

6 Continuing at 6:39.

7 We're at 6:41. Mr. Gutzalenko just said two more
8 times, "I can't breathe. I can't breathe," correct?

9 A. That's correct.

10 Q. All right. So when a person says "I can't
11 breathe" and they're being restrained, prone restrained,
12 and the -- and an officer is leveraging their weight
13 with the knee into the person's back, aren't officers
14 supposed to take the weight off the person's back if
15 it's reasonable under the circumstances to do so?

16 MR. FINE: Mischaracterizes the video. Vague and
17 ambiguous. Overbroad. Incomplete hypothetical.

18 THE WITNESS: If it's reasonable at the time,
19 then it looks like Officer Tran is trying to control as
20 well as Officer Hall is trying to control
21 Mr. Gutzalenko.

22 BY MR. NISENBAUM:

23 Q. Sure.

24 Is it your understanding that when you interfere
25 with the person's breathing, that that can cause serious

1 bodily injury or death --

2 MR. FINE: Incomplete hypothetical. Overbroad.

3 Calls for expert opinion. Vague.

4 BY MR. NISENBAUM:

5 Q. -- based on your training and your experience?

6 MR. FINE: Same objections.

7 THE WITNESS: Well, there are numerous times that
8 we come in contact with subjects who claim they can't
9 breathe. And again, during this incident, we were just
10 trying to control Mr. Gutzalenko to provide him aid.
11 Again, I don't know exactly what was going on internally
12 with Mr. Gutzalenko other than what he's -- he's
13 verbally saying at the time.

14 BY MR. NISENBAUM:

15 Q. Well, it's not just what he's verbally saying.
16 The totality of the circumstances included what
17 proceeded this, that he had vomited in a store, that he
18 had blood and vomit coming out of his mouth before this,
19 so you knew that -- I mean, you were aware that this was
20 a medical crisis that involved the very thing that you
21 need to get air into your body, right?

22 MR. FINE: Calls for expert opinion. Vague and
23 ambiguous. Calls for speculation. Incomplete
24 hypothetical.

25 THE WITNESS: Correct.

1 BY MR. NISENBAUM:

2 Q. Okay. So this is not just some person pretending
3 that they can't breathe. You knew it was an issue
4 before this started and that things like putting a knee
5 on his back, leveraging weight into that knee while he's
6 in a prone position are things that can exacerbate an
7 existing respiratory problem, correct?

8 MR. FINE: Same objections. Mischaracterizes the
9 video.

10 THE WITNESS: That's correct. But again -- well,
11 again, in this -- that's not what happened here.
12 Mr. Gutzalenko was -- again, was actively trying to
13 prevent us from rendering aid to him. From what I
14 recall -- recall, Officer Tran and Officer Hall were
15 trying to keep him -- or we were trying to keep him
16 on -- on his side, but as I stated, Mr. Gutzalenko
17 continued to resist and prevent us from trying to render
18 aid to him. So that's not what happened here.

19 BY MR. NISENBAUM:

20 Q. Well, I understand it's not -- I understand that,
21 in your view, there's no malicious conduct here, that
22 you're not trying to hurt him. I get that. But the
23 question has to do with, what actually happened
24 physically, right? And you understand that the
25 Graham v. Connor standard is an objectively reasonable

1 standard not based on an officer's subjective
2 intentions, correct?

3 A. Correct.

4 Q. Okay. And so this is a use of force, right?
5 We're looking at a use of force, correct?

6 A. Correct.

7 MR. FINE: Calls --

8 BY MR. NISENBAUM:

9 Q. Okay. And all force has to be reasonable, right?

10 A. Correct.

11 Q. Based on an objectively reasonable officer
12 standard, correct?

13 A. That is correct.

14 Q. Based on the totality of the circumstances,
15 correct?

16 A. Correct.

17 Q. I know I might be taking you back to the police
18 academy, but -- and that's very basic to your job,
19 right?

20 A. Yes, sir.

21 Q. Okay. So the information -- I mean, certainly,
22 there might be circumstances where a person might be
23 faking that they can't breathe, but what you have here
24 is a person who already is exhibiting breathing
25 problems, who already appears to be in some medical

1 distress, who's apparently vomited, who's got blood
2 coming out of his mouth, and then they're in this
3 position where an officer has a knee in their back,
4 leveraging his weight into the back, and that knee was
5 there for a long time. He might have changed position
6 somewhat, but the pressure was still being applied for
7 a -- many minutes. And that's what we've seen in the
8 video. That's all -- those are all factors that you
9 have to take into account here, especially when he says,
10 "I can't breathe," right?

11 MR. FINE: Mischaracterizes the video. Misstates
12 prior testimony. Calls for speculation. Vague and
13 ambiguous. Overbroad. Incomplete hypothetical.

14 THE WITNESS: Well, when you say "a long time,"
15 I -- I don't necessarily understand what you mean by "a
16 long time." It was merely seconds, if that, so a long
17 time -- I wouldn't characterize that as being a long
18 time.

19 BY MR. NISENBAUM:

20 Q. Well, the knee has been in his back from what we
21 can tell for at least -- let's see -- for at least
22 two minutes and 31 seconds.

23 MR. FINE: Is that a question?

24 BY MR. NISENBAUM:

25 Q. I mean, that's what the video has shown, you

1 know. It -- it's moved positions somewhat here and
2 there, but there's still been that pressure applied
3 to -- you know, between the back or the side -- the back
4 and the side to those areas. It's still pressure being
5 applied there, right?

6 MR. FINE: Mischaracterizes the video.

7 THE WITNESS: Well, when you're saying
8 two minutes or however long, I -- I don't necessarily
9 agree with that.

10 BY MR. NISENBAUM:

11 Q. Well --

12 A. Again, this -- this incident happened pretty
13 rapidly. And as you stated, Officer Tran's knee or
14 contact with the -- the back of Mr. Gutzalenko moved
15 from different positions, so as far as it -- how you're
16 characterizing, it sounds like that his knee was
17 completely in one spot for two-plus minutes. So I -- I
18 don't think that's --

19 Q. I didn't say that. I didn't say that. And I
20 don't mean to imply that.

21 A. Okay.

22 Q. I said specifically that while it may have moved
23 locations on his back, it was always pressed against his
24 back.

25 MR. FINE: Mischaracterizes the video. And calls

1 for speculation. Lacks foundation.

2 BY MR. NISENBAUM:

3 Q. Well, we haven't identified any part where --
4 during this time period where the knee wasn't on his
5 back in some part of his back, right?

6 MR. FINE: You're asking me the question or him?

7 MR. NISENBAUM: No. I'm asking him.

8 MR. FINE: Okay. Same objections.

9 THE WITNESS: Well, I wouldn't -- just based on
10 the video, I wouldn't say it's pressing down. There is
11 contact with Mr. Gutzalenko's back, but as far as
12 pressing down, I don't think that's what was happening
13 here.

14 BY MR. NISENBAUM:

15 Q. You testified maybe two minutes ago,
16 three minutes ago that you agreed it looked like he was
17 leveraging his weight into that knee, correct?

18 MR. FINE: Misstates prior testimony.
19 Mischaracterizes the video. Lacks foundation. Calls
20 for speculation.

21 THE WITNESS: Well, there was one, the video that
22 you showed me. It did appear that Officer Tran was
23 pressing down on his back, but then, again, it moves
24 positions where it doesn't appear that he's pressing
25 down on his back. So there is contact there, but I

1 don't think Officer Tran had continuously pressed his
2 knee into Mr. Gulensko's [sic] back.

3 BY MR. NISENBAUM:

4 Q. Gutzalenko.

5 A. Gutzalenko's. I apologize.

6 Q. No problem.

7 I'm going to continue at 6:41.

8 Okay. Paused at 6:50. About two seconds ago,
9 Officer Tran removed his knee from his back, correct?

10 A. Correct.

11 Q. Okay. One cuff is on, and it looks like they're
12 bringing the other arm, the right arm, around to be
13 cuffed, correct?

14 A. That's correct.

15 Q. Okay. Continuing at 6:50.

16 We're at 6:54. Mr. Gutzalenko says again, "I
17 can't breathe," correct?

18 A. Correct.

19 Q. Okay. And he's being -- and the other arm is
20 being cuffed, correct?

21 A. That's correct.

22 Q. Continuing at 6:54.

23 Okay. Do you know who -- was that you asking the
24 question about leg restraints?

25 A. I believe so.

1 Q. Okay. And you were asking, obviously, because
2 you thought he was going to kick, and so he would need
3 leg restraints, right?

4 A. That's correct.

5 Q. Okay. Pausing at 7:11. Officer Hall apparently
6 said, "Stop."

7 And then they say, "Here's the Taser," and make
8 like an electronic sound?

9 MR. FINE: Mischaracterizes the video.

10 MR. NISENBAUM: I think that's what happened.

11 BY MR. NISENBAUM:

12 Q. Let me go to 7:06. I'll play it again.

13 I heard some sound after, "Here's the Taser." I
14 don't know what it was. I thought it was his voice
15 mimicking the Taser, but I can be wrong.

16 A. Right. I don't believe it was a Taser.

17 Q. No, it wasn't a Taser.

18 Was it his voice mimicking a Taser, is my
19 question --

20 MR. FINE: Calls for speculation. Lacks
21 foundation. Vague and ambiguous.

22 BY MR. NISENBAUM:

23 Q. -- doubling down on the ruse?

24 MR. FINE: Same objections.

25 THE WITNESS: Maybe that's what he was doing, but

1 I -- I couldn't distinguish that sound or who made that
2 sound.

3 BY MR. NISENBAUM:

4 Q. Okay. But you heard the sound?

5 A. I believe I --

6 MR. FINE: Vague as to "the sound."

7 BY MR. NISENBAUM:

8 Q. Okay. We're at 7:11.

9 Okay. And whose knee is that in -- now, it looks
10 like in the lower part, right around the waistline, the
11 left waistline of Mr. Hall, if you know?

12 MR. FINE: Mischaracterizes the video.

13 MR. NISENBAUM: Yeah. I'm sorry.

14 BY MR. NISENBAUM:

15 Q. Mr. Gutzalenko.

16 MR. FINE: Same objection.

17 THE WITNESS: That appears to be Officer Hall.

18 BY MR. NISENBAUM:

19 Q. Okay. All right. Continuing at 7:15.

20 Has he actually been handcuffed yet? I paused at
21 7:16.

22 MR. FINE: Vague.

23 THE WITNESS: From what I could tell, it looks
24 like one arm is handcuffed.

25 ///

1 BY MR. NISENBAUM:

2 Q. Okay. So we're at 7:16.

3 We're at 7:28. Officer Tran said, "Got it,"
4 indicating that the cuffing was completed, correct?

5 A. That's correct.

6 Q. Okay. We're at 7:28.

7 We're at 7:35. Mr. Gutzalenko was alive here,
8 correct?

9 A. Yes.

10 Q. Okay. Was he still kicking?

11 A. If I recall, he -- he was still kicking, but I
12 don't believe it was as much because I still -- in your
13 video that I'm seeing, it still looks like I am
14 controlling, appears to be, his left ankle.

15 Q. All right. It seemed like he was still trying to
16 kick; is that correct? It's not --

17 A. That's correct.

18 Q. Okay. So we're at 7:35.

19 Okay. We're at 7:39. Mr. Gutzalenko is lying on
20 his right side handcuffed. You have Officer Tran,
21 his -- has his hands on his right shoulder -- or his
22 left shoulder and left elbow, correct?

23 A. That is correct.

24 Q. Okay. Looking at this now, and I don't know if
25 you're looking elsewhere, I can tell where the body cam

1 is. But it looks like you would have a view of the EMT,
2 this person here, Damon Richardson. Like, you would
3 have a direct view of his actions.

4 Do you recall that now?

5 MR. FINE: Calls for speculation.

6 THE WITNESS: I recall that the medical personnel
7 was there and this gentleman was there on scene.

8 BY MR. NISENBAUM:

9 Q. Okay. Well, I understand that.

10 But do you recall this part? He's got the
11 syringe in the right hand?

12 A. It's hard to tell what he has in his hand.

13 Q. Okay. Well, you'll see it in a moment.

14 Pausing at 7:40. You can see the syringe is in
15 his right hand now, right?

16 A. Yes.

17 Q. Okay. All right. Continuing at 7:40. And
18 Mr. Gutzalenko at this point, you still felt like he was
19 still trying to kick; is that right?

20 A. I believe so. I -- I believe I still had control
21 of his -- his legs.

22 Q. Okay. 7:40, continuing.

23 All right. We're paused at 7:45. I'm going to
24 go back just a shade.

25 7:39, you can see Officer Tran's right hand.

1 Do you see it?

2 A. I do.

3 Q. Okay. We'll continue.

4 And one of the things that you might do without
5 communicating with the paramedic is move clothing to
6 facilitate the injection.

7 Is that fair to say?

8 A. Yes.

9 Q. Okay. All right. Paused at 7:43. That was
10 Officer Tran's hand and in conjunction with
11 Mr. Richardson that moved the clothing, that moved the
12 shirt off Mr. Gutzalenko's left shoulder, correct?

13 A. That's correct.

14 Q. Okay. And it's -- obviously, you can tell that
15 it's for the purpose of the injection, correct?

16 A. That's correct.

17 Q. Okay. Continue at 7:43.

18 Pausing at 7:49. We just saw the injection going
19 to the shoulder area. I don't know the exact medical
20 term for that part of the shoulder, but you saw that,
21 correct?

22 A. That's correct.

23 Q. And that was the area that Officer Tran had
24 exposed by moving the shirt, correct?

25 A. That's correct.

1 Q. Okay. Continuing at 7:49.

2 7:54, someone said, "He's unconscious, so he's
3 good."

4 Do you know who that was?

5 A. I don't recall, or I can't distinguish exactly
6 who said that.

7 Q. Might have been, "It looks like he's unconscious,
8 so he's good."

9 Play it back from 7:48.

10 Okay. You don't know who said it?

11 MR. FINE: Calls for speculation. Asked and
12 answered.

13 THE WITNESS: I believe that was Officer Hall in
14 the background.

15 BY MR. NISENBAUM:

16 Q. Okay. All right. 7:53, continuing.

17 And Officer Tran, I think he said, "Are you good,
18 buddy?" And then -- or "You're good, buddy?" And then
19 kind of slapped him on the chest, like, to say "okay,"
20 something like that, right?

21 MR. FINE: Mischaracterizes the video.

22 THE WITNESS: It appears so.

23 BY MR. NISENBAUM:

24 Q. Okay. I mean, it wasn't like the slap on the
25 chest you're doing when you're trying to hurt someone.

1 It's the slap on the chest when you're trying to say,
2 "All right. It's over. You're okay. We're all okay."
3 At least that's what they thought at the moment, right?

4 MR. FINE: Calls for speculation. Lacks
5 foundation.

6 THE WITNESS: I believe Officer Tran was just
7 trying to provide some reassurance.

8 BY MR. NISENBAUM:

9 Q. Right.

10 So we're at eight minutes, continuing.

11 I'm going to pause it at 8:24.

12 Could you tell at this point whether -- is this
13 when you first noticed that Mr. Gutzalenko was turning
14 blue or it happened before this or still to come?

15 A. I believe it's still to come.

16 Q. Okay. Continuing at 8:24.

17 We're at 8:45. It looks like someone asking,
18 "Ivan, are you there, buddy? Wake up."

19 Is that Officer Hall who said that?

20 MR. FINE: Calls for speculation.

21 THE WITNESS: I can't tell based on this clip.
22 I'm not sure whose hands on Mr. Gutzalenko's -- it looks
23 like his chest area.

24 BY MR. NISENBAUM:

25 Q. Well, I know it's not the paramedics because it

1 has a sleeve. That's what I can say.

2 A. Then it might -- again, I can't tell --

3 MR. FINE: There's no question pending, Officer.

4 THE WITNESS: Okay.

5 BY MR. NISENBAUM:

6 Q. Did you recognize the voice, though? You would
7 know Officer Hall's voice.

8 So let me go back, 8:39.

9 So "Ivan, are you there? Wake up, buddy," was
10 that Officer Hall?

11 MR. FINE: Calls for speculation. Asked and
12 answered. Lacks foundation.

13 THE WITNESS: I can't tell if that was Hall or
14 Tran.

15 BY MR. NISENBAUM:

16 Q. Okay. And someone said in the background, "Is he
17 breathing?"

18 Do you know who said that?

19 A. I don't.

20 MR. FINE: Same objection -- same objections.

21 BY MR. NISENBAUM:

22 Q. Go back to 8:39.

23 Pausing at 8:42. Someone just said, "Is he
24 breathing?"

25 A. That sounded like Officer Hall.

1 Q. Okay. All right. Continuing at 8:42.

2 8:49, "He's" -- "hey, he's getting blue in the
3 face," was that you?

4 A. That sounds like me, sir.

5 Q. Okay. And I take it that's when you first
6 noticed that he was getting blue in the face, maybe a
7 couple of seconds before that?

8 A. That's correct.

9 Q. Okay. All right. He's on the gurney. He's
10 obviously not in the ambulance, right?

11 A. That's correct.

12 Q. I'm not going to make you listen or go through
13 the rest of it. I know it's a difficult experience.
14 I'm going to stop the share.

15 I do have -- actually, sorry. One other question
16 that I have. Back to seven -- okay.

17 I don't think I asked this, but in a few seconds,
18 you're going to hear someone say, "Oh, we're doing
19 great. He's unconscious, so that's good." I don't
20 think -- did I ask you about that yet? I don't think
21 so. Let me listen for that sentence. And let me know
22 if you know who says it.

23 Did you hear it?

24 A. I did.

25 Q. Okay. Do you know who said that?

1 MR. FINE: Calls for speculation. Lacks
2 foundation. Asked and answered.

3 THE WITNESS: Sounds like Officer Hall.

4 BY MR. NISENBAUM:

5 Q. Okay. All right. I'll stop the share there.

6 So you testified that -- in your coroner's
7 inquest that no force was used that day. I think we
8 discussed that. That's not technically true, right?

9 MR. FINE: Vague. Overbroad. I'd ask that you
10 show him, give him context for his testimony.

11 MR. NISENBAUM: Okay.

12 BY MR. NISENBAUM:

13 Q. Page 62 of the coroner's inquest. Let me pull it
14 up here.

15 Okay. Oh, just so we're clear here, this is your
16 testimony. And we don't need to make this an exhibit.
17 It's too long, and I think it's unnecessary.

18 MR. FINE: Didn't we make this Exhibit A already?

19 MR. NISENBAUM: The transcript of the coroner's
20 inquest?

21 MR. FINE: You had read a lot from it earlier, I
22 believe. And the court reporter asked you if you
23 wanted --

24 MR. NISENBAUM: That was his --

25 MR. FINE: -- to make it a --

1 MR. NISENBAUM: -- interview.

2 MR. FINE: Okay. Understood.

3 MR. NISENBAUM: Okay. That was the -- so the
4 exhibit itself is confidential. It didn't sound like
5 you had any objections to the parts that I read not
6 being confidential. But that was the interview.

7 BY MR. NISENBAUM:

8 Q. So this is the coroner's inquest transcript. So
9 we're on page 57 of the transcript.

10 You see your name, Cedric Tagorda, called as a
11 witness, being sworn and testified as follows? Do you
12 see that?

13 A. I do.

14 Q. Okay. So then going to page 62. And it might
15 have been the context of the questioning, but at
16 page 62, line 3:

17 "Q. All right. At any time, did you see any
18 officer strike him with the baton, tase him, pepper
19 spray him, put a knee on his neck, do anything such as
20 that using that kind of force?

21 "A. No, your Honor. No force was used that
22 day."

23 Is it fair to say that your testimony was with
24 respect to force as people typically think about it as
25 opposed to a police training regarding force and what

1 force is?

2 A. Yes.

3 Q. Okay. So it is true that there was force used
4 against Mr. Gutzalenko as under police -- Richmond
5 Police Department policy and training, correct?

6 A. Well, when I refer to no use of force, again, no
7 force, meaning no baton, no Taser, no pepper spray. We
8 didn't have to tackle Mr. Gutzalenko. The only thing
9 that we did that day was trying to control
10 Mr. Gutzalenko. And that was -- again, that's what I
11 was referring to when I said no use of force was used
12 that day.

13 Q. I get that. I understand that. I'm not -- you
14 were using the term "force" colloquially, right?

15 A. Correct.

16 Q. But under -- you know, so with that in mind, as
17 the Richmond Police Department defines force, there was
18 force used that day and with the technical terms of
19 the -- of police -- Richmond Department policy, correct?

20 A. I would say correct. But again, in the
21 circumstances, I -- I don't believe any force was used
22 that day, and that's the reason why I stated that.

23 Q. Again, you mean that the particular types of
24 force that you enumerated, what people think of when
25 they think of force being used, right?

1 A. That's correct.

2 Q. Force as you might see it on the evening news
3 but -- okay.

4 All right. Is there anything that has jogged
5 your recollection or memory of anything I haven't asked
6 you that you think is significant?

7 A. Nothing comes to mind.

8 Q. Okay. Do you feel like going through this
9 process of this deposition, you now remember what
10 happened a lot better than you did when we started the
11 deposition?

12 A. I do.

13 Q. Okay.

14 MR. NISENBAUM: I'm going to stop the share. Let
15 me just check a couple more notes. And let's take a --
16 let's take like a ten-minute break, like a --

17 MR. KANTER: Five.

18 MR. NISENBAUM: Five is fine with me, whichever
19 you guys want.

20 MR. FINE: All right. I think five is
21 probably -- just want -- let's come back at 12:21.

22 Does that work for everybody?

23 MR. NISENBAUM: That's fine. Fine.

24 (Off the record.)

25 MR. NISENBAUM: All right. So I sent the correct

1 transcript for Officer Tagorda. It is a document
2 entitled "Officer Tagorda [CONF 1430-1446].pdf" and that
3 is confidential Exhibit A. And with that, I'm done.

4 MR. FINE: Go ahead, Mr. Kanter.

5 MR. KANTER: I just have a few questions. I
6 represent American Medical Response West and
7 Damon Richardson.

8 EXAMINATION

9 BY MR. KANTER:

10 Q. You were aware that Mr. Gutzalenko was being
11 placed in custody to be detained while Officer Tran and
12 Officer Hall were investigating a claimed vandalism of a
13 store, right?

14 A. Yes. That's correct.

15 Q. And it was your understanding that the paramedics
16 were called to the scene because Mr. Gutzalenko had a --
17 had bruised and bloody hands that -- and possible
18 injuries that needed to be medically treated, correct?

19 A. Correct.

20 Q. Mr. Gutzalenko was not formally placed on a 5150
21 hold in this case, was he?

22 A. He was not.

23 Q. And that was just something that was under
24 consideration; is that right?

25 A. That's correct.

1 Q. And you didn't tell the AMR paramedics about that
2 consideration in this case, correct?

3 A. Not in this case, no.

4 Q. And you didn't direct the AMR medics to use a
5 sedative in this case, correct?

6 A. I did not.

7 Q. None of the police officers did, right?

8 A. That's correct.

9 Q. And the use of a sedative was a decision that the
10 paramedic made for his own purposes in providing medical
11 care, right?

12 A. Yes, sir.

13 MR. KANTER: Those are all the questions I have.
14 Thanks.

15 MR. FINE: Just a couple, Officer Tagorda.

16 EXAMINATION

17 BY MR. FINE:

18 Q. If we go back to the radio call that you received
19 to respond to this incident, can you tell me, again,
20 what you recall about that, what you heard over the
21 radio?

22 A. It was a disturbance call regarding a subject who
23 was entering stores, vandalizing stores, as well as
24 having -- appear to have some type of medical issue.

25 Q. And so when you were responding to this, you were

1 responding to a report of a crime; is that correct?

2 A. Yes.

3 Q. It wasn't just a medical emergency; is that
4 right?

5 A. That's correct.

6 Q. At any point during the officers' interactions
7 with Mr. Gutzalenko, did you see Officer Tran place any
8 significant compressive pressure in the center of
9 Mr. Gutzalenko's back?

10 A. I did not.

11 Q. And if at any point you had seen what you believe
12 to be Officer Tran putting significant compressive
13 pressure on any area of Mr. Gutzalenko that you believed
14 would have restricted his airflow, what would you have
15 done?

16 A. I would have moved that body part, in this case,
17 his knee. I would have moved it or given -- as far as
18 pushed Officer Tran off of Mr. Gutzalenko.

19 Q. Okay. And -- but you didn't do that here; is
20 that right?

21 A. That's correct.

22 Q. And why not?

23 A. Because I did not see any of -- I didn't see that
24 action or anything that would prevent Mr. Gutzalenko's
25 airways from being restricted.

DEPOSITION OF OFFICER CEDRIC TAGORDA - VIDEOCONFERENCE

1 Q. Okay.

2 MR. FINE: That's all I got.

3 THE REPORTER: Mr. Fine and Mr. Kanter, would you
4 like to order a transcript?

5 MR. FINE: Just one second. I want to --
6 Mr. Nisenbaum may have some follow-ups --

7 MR. NISENBAUM: No.

8 MR. FINE: -- or not. That's fine too. I just
9 didn't want to cut it short.

10 MR. KANTER: I'd like an electronic copy.

11 THE REPORTER: Okay.

12 MR. FINE: I would as well, please.

13 (Deposition concluded at 12:29 p.m.)

14 --o0o--
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OF OFFICER CEDRIC TAGORDA - VIDEOCONFERENCE

1 STATE OF CALIFORNIA)
2)
3 COUNTY OF FRESNO)
4

5 I, LILIANA RODRIGUEZ, Certified Shorthand Reporter,
6 in and for the State of California, do hereby certify:

7 That the foregoing proceedings were taken before me
8 remotely at the time and place herein set forth; that
9 any witnesses in the foregoing proceedings, prior to
10 testifying, were duly sworn; that a record of the
11 proceedings was made by me using machine shorthand which
12 was thereafter transcribed under my direction; that the
13 foregoing is a true record of the testimony given.

14 Pursuant to Federal Rule 30(e), transcript review
15 was requested.

16 I further certify that I am neither financially
17 interested in the action, nor a relative or employee of
18 any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date subscribed my
20 name.

21 DATED: _11_/_11 /_24_

22 Fresno, California

23
24 /s/Liliana Rodriguez
25 LILIANA RODRIGUEZ, CSR No. 13783

EXHIBIT 4

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

--o0o--

IVAN GUTZALENKO, Deceased,)
through his Co-Successors)
in Interest, N.G. and N.I.G,))
minors through their mother)
and Next Friend, Honey)
Gutzalenko, individually)
and as Co-successors in)
Interest for IVAN)
GUTZALENKO, Deceased,)

Plaintiffs,)

vs.)

CITY OF RICHMOND, et al.,)

Defendants.)

CERTIFIED COPY

CASE NO.: 3:22-cv-02130-EMC

VIDEOCONFERENCE DEPOSITION OF

OFFICER MARK HALL

THURSDAY, SEPTEMBER 5, 2024

10:00 A.M. - 1:13 P.M.

REPORTED BY: Liliana Rodriguez, CSR No. 13783

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

INDEX OF EXAMINATION

WITNESS: OFFICER MARK HALL

EXAMINATION	PAGE
By Mr. Nisenbaum	6
By Mr. Kanter	143
By Mr. Fine	145

--o0o--

Appearance Page	3
Exhibit Page	4
Location	5
Declaration Under Penalty of Perjury	147
Reporter's Certificate	148
Disposition	149
Witness Letter	150
Deposition Errata Sheet	151
Attorney's Notes	152

--o0o--

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 REMOTE APPEARANCES

2
3 For Plaintiffs:

4 LAW OFFICES OF JOHN L. BURRIS
5 BY: BEN NISENBAUM, ATTORNEY AT LAW
6 JAMES COOK, ATTORNEY AT LAW
7 Airport Corporate Center
8 7677 Oakport Street, Suite 1120
9 Oakland, California 94621
10 (510) 839-5200
11 Ben.Nisenbaum@johnburrislaw.com

12
13 For Defendants:

14 ORBACH HUFF & HENDERSON LLP
15 NICHOLAS FINE, ATTORNEY AT LAW
16 6200 Stoneridge Mall Road, Suite 225
17 Pleasanton, California 94588
18 510.999.7908
19 Nfine@ohhlegal.com

20 For Defendants:

21 HINSHAW, MARSH, STILL & HINSHAW, LLP
22 SCOTT R. KANTER, ATTORNEY AT LAW
23 12901 Saratoga Avenue
24 Saratoga, California 95070
25 408.861.6500
Skanter@hinshaw-law.com

Also Present:

Crystal Mackey,
Law Offices of John L. Burris

Officer Tom Tran

--o0o--

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

INDEX TO EXHIBITS

WITNESS: OFFICER MARK HALL

MARKED	DESCRIPTION	PAGE
--------	-------------	------

(NONE MARKED)

--o0o--

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 Zoom videoconference deposition of
2 OFFICER MARK HALL,
3 taken on behalf of Plaintiffs, beginning at 10:00
4 a.m. and ending at 1:13 p.m. on Thursday,
5 September 5, 2024, before Liliana Rodriguez, Certified
6 Shorthand Reporter No. 13783

7
8 --o0o--
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 REPORTED REMOTELY FROM FRESNO COUNTY, CALIFORNIA;

2 THURSDAY, SEPTEMBER 5, 2024, 10:00 A.M.

3 -oOo-

4 OFFICER MARK HALL,

5 having been first duly sworn,

6 testified as follows:

7 EXAMINATION

8 BY MR. NISENBAUM:

9 Q. Okay. Can you please state and spell your name?

10 A. Mark Hall. M-A-R-K, H-A-L-L.

11 Q. And what is your current occupation?

12 A. I'm retired.

13 Q. Okay. What was your most recent occupation?

14 A. Police officer with the City of Richmond Police
15 Department.

16 Q. Okay. What was your date of retirement?

17 A. It was in February of 2023.

18 Q. And was the retirement, was it a matter of time,
19 and you were eligible to retire, or was it medical
20 related or some other reason?

21 A. Medical related.

22 Q. Okay. And the medical condition involved, did it
23 have anything to do with this incident involving
24 Ivan Gutzalenko?

25 A. No.

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 Q. Okay. And what -- so you retired in February of
2 2023.

3 Were you on leave for some period of time before
4 your retirement?

5 A. I was. I had surgery, and so I was on leave for
6 about a year. And then I went back to an
7 administrative -- administrative position. It was light
8 duty to see if I could rehab myself back to return to
9 duty.

10 Q. Okay. Now, the date of this incident, I believe,
11 is March 10th, 2021.

12 Does that refresh -- does that sound right to
13 you?

14 A. It was definitely in March of 2021.

15 Q. Okay. And I assume you were on leave for some
16 period of time after this incident, correct?

17 A. I want to say it was probably September, October
18 of that year that I went on leave. It's just an
19 estimation, but it was shortly -- it was -- I was back
20 in service for a while after this incident.

21 Q. Right.

22 And then you went out on leave maybe seven months
23 after this incident, six or seven months?

24 A. Yeah, approximately. I can't recall exactly the
25 time frame.

1 Q. Okay. And I don't know that it's significant,
2 and it probably isn't, but I'm just trying to get a
3 sense of how long you were on leave after this incident
4 happened. You were on administrative leave for some
5 period of time as a matter of routine, correct?

6 A. Oh, you mean as far as my injury or as for --

7 Q. All right. Gutzalenko.

8 A. Well -- so I was supposed to have three days off,
9 but the psychologist, he had an accident at home, so I
10 was off an extended amount of time waiting for the
11 clearance to return.

12 Q. Okay. And what was an extended amount of time?
13 How long?

14 A. I think it was a -- it was almost a -- a week and
15 a couple of days. I was -- he -- I was -- I was slated
16 to be -- you know, have my evaluation. And apparently,
17 he had a -- he had a slip-and-fall accident. He was
18 actually in the hospital for some time.

19 Q. Okay. All right. Now, let me ask you, when did
20 you become licensed as a police officer?

21 A. In December of 2021 -- correction, December of
22 2001, I graduated the police academy from Napa Police
23 Academy.

24 Q. Okay. All right. And at the police academy --
25 at Napa Police Academy, you received training in

1 providing courtroom testimony, correct?

2 A. Yes.

3 Q. All right. And you have, in fact, testified in
4 court probably way more times than you can count, right?

5 A. That's safe to say, yes.

6 Q. Would you estimate more than 50?

7 A. Yes.

8 Q. Okay. More than a hundred?

9 A. Yes.

10 Q. All right. I want to ask further.

11 Have you had your deposition taken before?

12 A. Sometime ago, but I -- I don't recall when.

13 Q. Was it in a civil matter in which you are a
14 defendant?

15 A. I was a witness officer.

16 Q. Okay. And so is it, like, some sort of car
17 accident or something?

18 A. No. It was -- it was an arrest, but I don't know
19 the terms, whatever happened to -- I gave my statement.
20 I never heard whatever happened with that.

21 Q. And when you say you gave your statement, you
22 gave your deposition like we're doing right now, right?

23 A. Yes. But it was in person.

24 Q. Right. And they used to be. Anyway.

25 All right. And obviously, the fact of testifying

1 is an experience that you're fairly comfortable with, I
2 take it?

3 A. Yes.

4 Q. All right. I'm going to go over some basic
5 admonitions, but, you know, I'm not going to cover them
6 all. If others become relevant, then I will discuss
7 them. I'll raise them.

8 Your testimony today is under penalty of perjury,
9 the same penalty of perjury as if you were testifying
10 live in court.

11 Do you understand that?

12 A. Yes.

13 Q. Okay. I'm entitled to your best estimate. I'm
14 entitled to what you know and your best recollection.
15 What I don't want is for you to guess or speculate, so
16 if you don't know the answer to a question, just say so.
17 If you don't remember, just say so. If you have a
18 partial recollection, I'm entitled to as much as you do
19 recall. And likewise, I'm entitled to your best
20 estimate of something that you saw, but, you know, the
21 example that's commonly given -- well, there are many
22 examples, but here's one of them. If I were to ask you
23 how big the table is or desk that you're at right now,
24 you'd be -- even though you don't have a tape measure,
25 you could estimate it, right? It's within your personal

1 knowledge.

2 Now, if I were to ask you the size of my desk,
3 because you can't even see it, it would be a pure guess.

4 Do you understand that?

5 A. Yes.

6 Q. All right. When the deposition is concluded, it
7 will be transcribed into a booklet, and you'll be able
8 to review it. And you can make changes to your
9 testimony, but I will caution you that if you make a
10 change that is substantive in nature, you can be
11 impeached by that, meaning your credibility can be
12 called into question, your truthfulness and honesty.

13 Do you understand that?

14 A. Yes.

15 Q. Okay. I'll give you an example that actually
16 happened. It was a case many, many years ago where
17 police officers entered the house, and they gave that --
18 a claim that the reason they entered the house was they
19 saw a shirt that appeared to have blood on it hanging
20 over the front door. And so I asked the officer, well,
21 you know, "Did the blood appear to be fresh blood or dry
22 blood or wet blood or dry blood?"

23 And he said, "I couldn't tell. I don't know."
24 And same thing with fresh blood.

25 So then he submits a written change to the court

1 reporter that says, "Your question is confusing to me.
2 Fresh blood could be wet blood or dry blood. This was
3 very, very fresh blood," which obviously contradicted
4 his testimony, initially. And that was used in a very
5 significant manner to impeach him.

6 Do you understand that?

7 A. I do.

8 Q. Okay. So next -- well, like I said, others will
9 come up. You're doing a good job of not talking over
10 me. I'll try to do the same, not talk over you. Let me
11 finish the question, and you start your answer.

12 Oh, if you don't understand the question, please
13 tell me. Okay?

14 A. Will do.

15 Q. Your lawyer will object from time to time. Well,
16 there are a couple of lawyers here who might object from
17 time to time. And if they do, you still have to answer
18 the question after the objection, but, of course, if you
19 don't understand it, then please tell me. All right?

20 MR. FINE: Or if I instruct you not to answer,
21 Officer.

22 BY MR. NISENBAUM:

23 Q. Well, there is that too. If he tells you not to
24 answer, that's a different matter, but I don't think
25 we're going to get into that.

1 For example, if I asked you, "Well, you and your
2 lawyer prepared for this deposition, what did you talk
3 about?" That would be privileged.

4 And he would tell you, "Don't answer that," so
5 I'm not entitled to that.

6 But I am entitled to ask you this: What
7 materials did you review in preparation for your
8 deposition?

9 A. I reviewed the district attorney investigation,
10 the bills from the callout. And I had a chance to
11 review my body camera footage.

12 Q. Did you review anyone else's body camera footage?

13 A. No.

14 Q. Okay. I'm going to ask you some questions now
15 about your training. Obviously, we're in a
16 post-George Floyd world. I think everybody knows that
17 people can be restrained to death effectively.

18 Do you have that same understanding?

19 A. I -- my --

20 MR. FINE: Vague and ambiguous.

21 Go ahead.

22 THE WITNESS: My understanding -- my
23 understanding is any use of force, no matter how minor,
24 could cause any kind of injury ultimately resulting to
25 death.

1 BY MR. NISENBAUM:

2 Q. Okay.

3 A. So no matter how little, it could. Force is
4 force, and it's not pretty no matter how you look at it.

5 Q. Okay. But you have been trained that when a
6 person is being restrained, and they're in a prone
7 position, that you're trained to avoid putting weight on
8 their back, correct?

9 MR. FINE: Incomplete hypothetical. Vague and
10 ambiguous.

11 Go ahead.

12 THE WITNESS: We are trained not to obstruct the
13 airway for asphyxiation, but there are control
14 techniques, which permit you to provide weight in
15 certain parts of different parts of the body.

16 BY MR. NISENBAUM:

17 Q. I understand that. My question was specific,
18 though.

19 You're trained to avoid putting weight on a
20 person's back when they're in a prone position if the
21 circumstances reasonably allow you to avoid doing that,
22 correct?

23 MR. FINE: Same objections.

24 THE WITNESS: But what part of the back? I mean,
25 there's different areas of the back where you're

1 permitted such as the shoulder. And it just --

2 BY MR. NISENBAUM:

3 Q. You -- sorry, I interrupted you.

4 You tell me what areas of the back are you
5 permitted to put weight force on when the person is
6 prone and being restrained as opposed to what areas of
7 the body you're not permitted to put weight force on in
8 that situation?

9 MR. FINE: Incomplete hypothetical. Vague and
10 ambiguous.

11 THE WITNESS: You definitely don't want to ever
12 put pressure on anyone's neck. That's a given. You --
13 you're allowed to place weight on somebody's shoulder,
14 on their gluteus maximus, on their lower back to keep
15 them prone. There's even techniques where you can do a
16 full mount where you can press your body weight on the
17 shoulder blades of someone and maneuver and spin around
18 to take hands out from under somebody, so the airway is
19 the most -- the area that's a big no-no area.

20 BY MR. NISENBAUM:

21 Q. You're talking about the throat area and the neck
22 area?

23 A. Neck, throat, those are -- those are the areas
24 that are no-goes. There's -- you know, no choke holds,
25 no pressure, no nothing.

1 Q. Do you have an understanding that in order for a
2 person to be able to breathe, they have to be able to
3 expand their rib cage?

4 MR. FINE: Incomplete hypothetical. Calls for
5 expert opinion. Vague and ambiguous.

6 THE WITNESS: My understanding is you have to
7 overcome resistance, and as long as you get them in
8 handcuffs and get up, there should be no issues or
9 obstruction. It's an extended amount of time. It could
10 cause any issues in no matter what type of use of force
11 you use.

12 BY MR. NISENBAUM:

13 Q. I understand that.

14 Again, my question is, do you have an
15 understanding that for a person mechanically to be able
16 to ventilate, you know what that means, right, breathe?

17 A. Well, I also understand the lungs are protected
18 by the rib cage, so they can actually expand because the
19 ribs are very strong. And as long as they're not broken
20 or punctured, the lungs will expand. The rib cage
21 provides the shell of protection.

22 Q. Where do you have that understanding from?

23 A. Different biology classes. The -- the skeletal
24 is what protects all of the vital organs. It's -- it is
25 the armor of the interior organs such as kidneys, heart,

1 lungs, spleen. It all provides protection especially in
2 the -- in the chest and rib cage area.

3 Q. It provides protection from trauma, but you
4 understand that your chest expands when you breathe
5 naturally, correct?

6 A. I do.

7 Q. Okay. And so if I'm understanding you correctly,
8 it is your understanding that you can breathe even if
9 your rib cage is being compressed --

10 MR. FINE: Misstates testimony -- oh, I'm sorry.

11 BY MR. NISENBAUM:

12 Q. That your lungs can expand even if your rib cage
13 is being compressed.

14 Is that what you just told me?

15 MR. FINE: Misstates testimony. Calls for expert
16 opinion. Vague and ambiguous.

17 BY MR. NISENBAUM:

18 Q. Go ahead.

19 A. So I -- I know I've had -- during training, I've
20 been -- I've had pressure on me. My rib cage has been
21 compressed. And I was able to breathe. I mean, that's
22 my mechanics. I would assume most -- everybody else's
23 mechanics, especially if they're healthy and, you know,
24 not, you know -- you know, drug induced or under the
25 influence of a substance that, you know, they should --

1 their breathing system should operate functionally just
2 as much as mine and yours.

3 Q. So what training did this occur in?

4 A. Defensive tactics.

5 Q. Defensive tactics.

6 That's -- so describe for me the scenario in
7 which you have your rib cage compressed, but you were
8 able to breathe.

9 And I'm sorry, were you able to breathe
10 unimpeded? Was your breathing uninhibited?

11 A. I was able to breathe. I was able to go with the
12 program. I had an officer who was heavier than me with
13 a full mount on my back with his hands pressing on my
14 shoulder blades putting his weight because I was
15 instructed to keep my hands under my body, and so I was
16 able to breathe, yes.

17 Q. So his weight, it's describe -- if you're -- if
18 I'm understanding the description correctly, by full
19 mount, I assume that's his butt on your butt, right?

20 A. His body weight on my body weight.

21 Q. Well --

22 A. I'm -- I'm on the ground prone, and he's on my
23 back.

24 Q. But would you describe more specifically, was
25 your prone -- he's on your back when you say "full

1 mount." I'm asking you, was his -- what part of his
2 body was against your body?

3 A. His -- his hands, his chest. He was laying
4 directly on my back along my shoulder blades. And he
5 had to maneuver around my back kind of like a helicopter
6 to try to get my -- wrestle my hands out from under my
7 body. And he had to mount his pressure -- his body
8 weight was pressed on mine, but I was still able to
9 breathe and communicate and talk.

10 Q. But his weight was pressed -- it sounds like, his
11 weight was pressed on your shoulder blades, correct?

12 A. And his chest and his abdomen area was pushed on
13 my back. He was pushed on me laying on my back.
14 That's -- that's what I've already stated. His body --

15 Q. Okay.

16 A. -- weight on my back.

17 Q. I understand. I'm asking you details, so I'm
18 trying to understand.

19 A. Well -- and I'm giving you the details. His body
20 is on my back. His whole weight is on my back. I'm
21 feeling him against me.

22 MR. FINE: I'm just going to object to this
23 entire line on relevance grounds.

24 MR. NISENBAUM: Well, he brought it up, so -- and
25 I don't think relevance is a proper objection in a

1 deposition.

2 MR. FINE: Go ahead, Counsel.

3 BY MR. NISENBAUM:

4 Q. So he was lying on top of your back, right?

5 A. Lying on top of my back, and the -- I was trying
6 to get my arm up from under me, but his weight was
7 pressed against me.

8 Q. Okay. And was this intended to replicate a
9 police -- a law enforcement restraint that happens in
10 the field?

11 A. When I was taught this, my arms were instructed
12 to be under me so they can, you know, try to get my --
13 spin around and get my arm out behind me and cuff me.

14 Q. And you were taught this. You were being trained
15 this way so that you were supposed to resist it as much
16 as possible, and they were supposed to force it to
17 happen, right?

18 A. Yes. I had to pull my arm out from under me.

19 Q. All right. And I take it, you're a -- how old
20 were you when that happened?

21 A. Maybe 30. Maybe 32. Thirty-one, 32.

22 Q. And what kind of shape were you in?

23 A. I wasn't in the best shape, you know, I -- I was
24 heavy set. I was unhealthy, on blood pressure
25 medications. I was -- I was very unhealthy. I'm -- I'm

1 healthy now, but I wasn't super healthy then.

2 Q. Okay. All right. And were you intoxicated?

3 A. No.

4 Q. Did you have a stimulant in your system?

5 A. No.

6 Q. Were you having difficulty breathing already?

7 A. No.

8 Q. Were you telling people, "I can't breathe"
9 already before the restraint began?

10 A. No.

11 Q. Okay. All right. And, of course, you were aware
12 that this was a training and not real life, right?

13 A. Yes.

14 Q. Okay. Thank you.

15 So what other training have you had regarding
16 avoiding asphyxiation during restraint?

17 MR. FINE: Vague and ambiguous.

18 THE WITNESS: We -- we've been instructed not
19 to -- I mean, in our policy, it strictly states no -- no
20 choke holds, you know, no -- you -- you never put
21 pressure on anybody's neck. That that's -- that's the
22 main thing, but you never want to obstruct an airway.
23 Period. That's what we've been taught.

24 BY MR. NISENBAUM:

25 Q. So there's no training at the Richmond Police

1 Department that you're aware of that instructs officers
2 to avoid prolonged weight or force against a person's
3 back while they're prone and being restrained; is that
4 correct?

5 MR. FINE: Misstates testimony.

6 THE WITNESS: There's training to effectively
7 place someone in handcuffs, but you're not to obstruct
8 their airway by placing weight along their neck or
9 breathing airway, so the point is you get them
10 handcuffed. And you get them into a recovery position
11 as soon -- you don't leave them prone on their chest.
12 As soon as you get them handcuffed, you roll them over
13 for recovery so their airway can be opened.

14 MR. NISENBAUM: Can you read the question back,
15 please?

16 THE REPORTER: Just a moment.

17 (Record read.)

18 BY MR. NISENBAUM:

19 Q. That's my question.

20 Is there any training that specifically is on
21 that point?

22 MR. FINE: Same objections. Asked and answered.

23 THE WITNESS: So again, there's training, and so
24 you have to get the handcuffs on, so the thing is,
25 you -- yes, you don't want them -- you don't want them

1 prolonged, so there is training not to keep them prone
2 out. As soon as you get them in handcuffs, you roll
3 them to a recovery position on their side.

4 BY MR. NISENBAUM:

5 Q. What if it takes five minutes to handcuff them,
6 is that fine?

7 MR. FINE: Same objections.

8 BY MR. NISENBAUM:

9 Q. Is it fine -- strike that. I'll be more
10 specific.

11 Is it fine to put weight force pressure on a
12 person who is being restrained in the prone position to
13 wait for weight force pressure on their back for up --
14 for five minutes, if that's how long it takes to get
15 them handcuffed?

16 MR. FINE: Incomplete hypothetical. Calls for
17 expert opinion. Vague and ambiguous.

18 THE WITNESS: And, well, if you're arresting
19 somebody, you don't -- you don't give up your ground.
20 You have to -- you don't know what this person is
21 capable of. You -- you know, they're -- if they're
22 resisting arrest, or, you know, if they're -- if they're
23 overcoming resistance, they're trying to fight, so you
24 don't give up your ground, especially if you have a
25 handcuff on them. You do not give up. Do not give them

1 that as a weapon.

2 BY MR. NISENBAUM:

3 Q. So you compress them against the ground as long
4 as you feel is necessary to get them handcuffed; is that
5 right?

6 MR. FINE: Same objections.

7 THE WITNESS: We -- we can't -- we will tell
8 people to stop resisting. We will tell them we don't
9 want to do this, but the thing is, ultimately, their
10 decision on how this occurs. We -- we can't give up
11 ground. We are -- we are -- we are responsible for
12 ensuring public safety.

13 BY MR. NISENBAUM:

14 Q. So the answer is, yes, you can compress them
15 against the ground as long as it takes to get them
16 handcuffed, no matter how long that time period is.

17 Is that your answer, yes or no?

18 MR. FINE: Misstates testimony. Incomplete
19 hypothetical. Vague and ambiguous. It calls for expert
20 opinion.

21 BY MR. NISENBAUM:

22 Q. Yes or no?

23 A. To overcome resistance, you have to get them in
24 custody.

25 Q. You have the question in mind. I asked very

1 specifically.

2 With respect to a person in a prone position on
3 the ground, you can compress them, compress their back,
4 press them against the ground as long as it takes no
5 matter how long it takes to get them into custody.

6 Is that your testimony?

7 A. So we --

8 MR. FINE: Misstates -- and so hold on.

9 Misstates testimony. Vague and ambiguous. Calls
10 for expert opinion.

11 Go ahead.

12 THE WITNESS: And the thing is, I'm not going to
13 give up my ground, because if this person is resisting,
14 I don't know if he has a gun in his waistband, and he's
15 fighting because this happened. People will fight the
16 police, so I'm going to get that person in custody. I'm
17 not going to give up my ground. I am not going to --
18 I'm not going to be killed by a subject who I don't know
19 what they're capable of, so they are going to -- you
20 know, use -- use of forces aren't pretty in any world.

21 BY MR. NISENBAUM:

22 Q. So that's a yes?

23 A. I will do what I have to do in order to overcome
24 resistance to complete my task.

25 Q. Is that a yes?

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 MR. FINE: Same objections.

2 THE WITNESS: Same statement.

3 BY MR. NISENBAUM:

4 Q. Not the same statement.

5 The question is, is that a yes?

6 A. Yes. I will -- I will get my person in custody.
7 I will not give up my ground. And I will not give them
8 their handcuffed arm as a weapon to swing around and hit
9 me or anybody else with.

10 Q. Okay. Even if that means that you're compressing
11 the person against the ground for an indefinite period
12 of time, that can be as long as you feel it's necessary?

13 MR. FINE: It's vague and ambiguous. Calls for
14 expert testimony. Asked and answered.

15 THE WITNESS: And that's the decision the
16 arrestee has to make. I don't -- I never want to use
17 force against anybody ever. Nobody wants that.

18 BY MR. NISENBAUM:

19 Q. Okay. I'm not here for the lecture. I'm asking
20 you questions, yes or no?

21 A. And I'm telling you, I am not going to give up my
22 ground, so yes, I am going to arrest him. I am not
23 going to give up my ground.

24 Q. And that includes you will compress them into the
25 ground as long as needed for you to get that person in

1 handcuffs; is that right?

2 MR. FINE: Vague and ambiguous. Calls for expert
3 testimony. Calls for speculation.

4 THE WITNESS: And I've never been in this
5 situation before because all of my arrests have been
6 quick and swift.

7 BY MR. NISENBAUM:

8 Q. Well, when you say "this situation," you're
9 referring to the one with Mr. Gutzalenko?

10 A. Yes.

11 Q. Okay. Right.

12 But that's why you received training, isn't it?

13 A. Yes, but I provided no pressure on except his
14 glute.

15 Q. You were present, right?

16 A. I was present.

17 Q. And you were present.

18 You were present while Officer Tran had his knee
19 in the middle of his back and was pressing down, right?

20 MR. FINE: Misstates the evidence.

21 BY MR. NISENBAUM:

22 Q. I guess we'll see.

23 But weren't you there when Officer Tran was doing
24 that?

25 MR. FINE: Misstates the evidence.

1 THE WITNESS: Officer Tran had his arm on his
2 shoulder blade area, right shoulder blade area. I never
3 saw any knee on his back.

4 BY MR. NISENBAUM:

5 Q. You didn't see any knee on his back, right?

6 A. I saw the shoulder blade area.

7 Q. Okay. How's your vision?

8 A. It's pretty good.

9 Q. Okay. No problems in your vision, and your
10 recollection, you don't have any problems there either,
11 right?

12 MR. FINE: It's argumentative.

13 THE WITNESS: He -- I saw on the -- over here
14 underneath the armpit area, near the shoulder blade area
15 where I didn't see him pushing any weight on his back.

16 BY MR. NISENBAUM:

17 Q. Okay. If you had seen that, is that something
18 you would have been obligated to tell him to back off or
19 not apply so much pressure?

20 MR. FINE: Incomplete hypothetical. Calls for
21 speculation.

22 BY MR. NISENBAUM:

23 Q. As you understand your training?

24 A. If you see any officer using an excessive amount
25 of force or wrong force, you have to correct them. You

1 have the duty to intercede to stop that.

2 Q. And in this situation, would that have been
3 unreasonable to do, to put a knee in the middle of
4 Mr. Gutzalenko's back, press down with it while he's in
5 prone position?

6 MR. FINE: Incomplete hypothetical. Calls for
7 speculation. Misstates the evidence.

8 BY MR. NISENBAUM:

9 Q. Would that have violated your department's
10 policy?

11 MR. FINE: I didn't know you weren't done. My
12 apologies. Same objections.

13 BY MR. NISENBAUM:

14 Q. Go ahead.

15 A. I -- if I would have seen him putting pressure on
16 his back, I would have either told him to move, or I
17 would have grabbed his knee and pushed him -- pushed his
18 knee over out of the airway, but from what I saw, it was
19 not in an obstructive position. He -- the arrestee was
20 still able to move around. And that's why my knee went
21 to his gluteus maximus.

22 Q. Okay. And again, if his knee were in the middle
23 of Mr. Gutzalenko's back pressing down, you do
24 understand, based on your training, that that's to be
25 avoided, correct, because it can interfere with

1 breathing?

2 MR. FINE: Misstates testimony. Misstates
3 evidence. Incomplete hypothetical. Vague and
4 ambiguous.

5 THE WITNESS: If he was applying pressure on his
6 back, it could obstruct the airway, but I did not see
7 his knee on his back. It was near his shoulder area.
8 And he was still moving and pulling and flailing around.

9 BY MR. NISENBAUM:

10 Q. And let me ask you this: Did you review anyone
11 else's interviews?

12 A. No. Just mine.

13 Q. You said you reviewed the DA's report. All of
14 it?

15 A. No. Just my statement.

16 Q. Okay. All right. So there was a witness who
17 described a chubby officer being on top of a -- being on
18 top of Mr. Gutzalenko.

19 Do you know who that chubby officer would be?

20 MR. FINE: Calls for speculation.

21 THE WITNESS: That would have been me, because I
22 was the -- I was the heavier set officer.

23 BY MR. NISENBAUM:

24 Q. Okay. So it's not Officer Tran?

25 MR. FINE: Calls for speculation.

1 THE WITNESS: No. I was -- I was a -- I was
2 heavy set back then. Officer Tran is shorter than I,
3 and he's stocky, so, I mean, it -- it could be either
4 him or I. But unless they give a race or anything, I
5 can assume it's me, or I can assume it's him. It's all
6 assumptions at this point.

7 BY MR. NISENBAUM:

8 Q. Well, one of you described him, Officer Tran, as
9 being heavy set, a big guy.

10 Did you do that?

11 A. I don't recall.

12 Q. Okay. One moment. Okay. So reading from --

13 MR. NISENBAUM: And, Officer Tran, I know you're
14 listening. I'm sure this is not news to you. But I --
15 I'm going to read from the interview of Officer Tagorda.
16 And this is at Bates-stamped City_01445. And this is
17 Officer Tagorda's interview.

18 Question 2, Q2, this is line 32, just one, "So
19 when Officer Tran had his knee on his back, was he on
20 his" -- "was the subject on his side? Was he on his
21 stomach for" -- "and also, did it appear like Officer,"
22 in parenthesis, "Tran was putting all his body weight,
23 or was it more of a" -- "just a" -- "trying to keep him
24 from jumping up?"

25 "ANSWER: It was more of just trying to keep him

1 from jumping up obviously," you know, "Tran is kind of
2 a" -- "a" -- "a big boy, a big, big boy. I don't mean
3 that in a mean way or anything."

4 Is that how you would describe Officer Tran, a
5 big boy.

6 A. I would just -- I -- not a big boy. I would
7 describe him as -- as a stocky boy, but I also say he's
8 in shape, and he has muscular features.

9 Q. Well, he's quite strong as well as being heavy
10 set; is that right?

11 MR. FINE: Calls for speculation.

12 THE WITNESS: I -- I would like to think he's
13 strong. He's a lot younger than I am, so, I mean --
14 but --

15 BY MR. NISENBAUM:

16 Q. What's your height and weight?

17 A. I am six-two, and I'm 238.

18 Q. And were you about the same weight at the time of
19 this incident?

20 A. No.

21 Q. What was your weight at the time of this
22 incident?

23 A. About 285.

24 Q. Okay. It sounds like that would be probably not
25 all muscle that you lost?

1 A. No. That was poor-shift eating.

2 Q. Right.

3 So you would describe yourself as being pretty
4 fat at the time of this incident?

5 A. Absolutely.

6 Q. Okay. Well, congratulations. That's a good
7 amount of weight to lose.

8 All right. But nevertheless, you never saw
9 Officer Tran's knee against Mr. Gutzalenko's back,
10 period, right?

11 MR. FINE: Vague and ambiguous.

12 THE WITNESS: Well, if you -- over here on the --
13 underneath.

14 BY MR. NISENBAUM:

15 Q. Yeah, in the center of his back, the center?

16 A. I -- I did not see center of the back.

17 Q. Now, let me ask you another question about your
18 training.

19 You know what the diaphragm is?

20 MR. FINE: Calls for expert opinion.

21 BY MR. NISENBAUM:

22 Q. Not the birth control device.

23 A. So, no, the diaphragm is like what's, you know,
24 in the -- I believe it's in the front portion of the
25 chest, and that's what helps you, you -- you know,

1 breathe.

2 MR. FINE: Belatedly, calls for speculation.

3 BY MR. NISENBAUM:

4 Q. And your training is that if you interfere with
5 the diaphragm, that could also impact a person's ability
6 to breathe, correct?

7 A. Yes. You don't want to interfere with anybody's
8 breathing at all obstructing airways. You -- that's --
9 you try to avoid that at all costs.

10 Q. Well, the diaphragm isn't an airway, is it?

11 MR. FINE: Calls for speculation. Calls for
12 expert opinion. Calls for -- yeah, that's it.

13 THE WITNESS: I -- my understanding, it's part of
14 the respiratory system.

15 BY MR. NISENBAUM:

16 Q. Okay. And where is it located, to your
17 understanding, in the body? Is it below the lungs?

18 A. I --

19 MR. FINE: Same objections.

20 THE WITNESS: Yeah. I don't want to -- I don't
21 want to guess. I mean, I can Google it right now, if
22 you would like me to.

23 BY MR. NISENBAUM:

24 Q. Go ahead.

25 Just based on your best recollection, your best

1 understanding, is it below the lungs?

2 MR. FINE: Calls for expert opinion. Calls for
3 speculation.

4 THE WITNESS: I just know it's part of the
5 respiratory system, and I would say it's somewhere in
6 the vicinity of the lungs.

7 BY MR. NISENBAUM:

8 Q. Okay. Is it, to your understanding, kind of
9 mid-torso?

10 MR. FINE: Same objections.

11 THE WITNESS: I would just say in the same area
12 as the lungs in the general area.

13 BY MR. NISENBAUM:

14 Q. Okay. And you're trained that you should avoid
15 putting weight where the diaphragm would be located,
16 correct, because that could interfere with the person's
17 breathing?

18 A. Yes. You want to avoid -- prevent anybody from
19 not breathing. You want everybody to breathe and
20 everybody to go into jail safely.

21 Q. Right.

22 Now, you talked about something earlier. You
23 said it's up to the arrestee. That your actions are
24 somehow determined by the arrestee.

25 Did I hear you correctly?

1 A. Yeah. We -- you know, if they surrender and, you
2 know, don't fight, or they don't resist, it's -- it's
3 easy. Everybody goes home, maybe a citation. I don't
4 know.

5 Q. I got it.

6 But if everybody followed the law, you'd be in a
7 different line of work, right?

8 A. And John Burris would be out of business.

9 Q. Would he, though?

10 A. He would be. If everybody followed the law,
11 they --

12 Q. Find that hard to believe.

13 A. I was with a lot of good people, and I -- I gave
14 myself to this job. And I never -- I've helped more
15 people than I ever hurt anybody. I have more lifesaving
16 citations. And this is the first time I've ever been
17 involved in something such as this.

18 Q. And so you're saying the only time that you've
19 actually inflicted an injury on anyone was in this
20 incident involving Mr. Gutzalenko?

21 MR. FINE: Misstates testimony.

22 THE WITNESS: There's uses of force. There's --
23 thing is, nothing like this has ever happened. And
24 nobody wants to see this ever happening to anybody.

25 ///

1 BY MR. NISENBAUM:

2 Q. Okay. I get that. You said something, so I'm
3 trying to follow up on it.

4 You said that you've never been involved in a
5 case where anything like this has ever happened, what do
6 you mean by "this"?

7 A. No. I -- I've had use of force where I've had to
8 use control holds, where I've never even used my baton.
9 I had to use my Taser, you know, I've -- but I've -- I
10 don't think I even had a pepper spray incident ever.

11 Q. Okay. So in your estimation throughout the
12 entirety -- and what was it, 22 years or something?

13 A. I think a little less.

14 Q. Near the 22-year career, you've only ever had to
15 use physical control holds, OC spray, and your Taser as
16 uses of force; is that right?

17 A. I don't --

18 MR. FINE: Misstates testimony, I believe.

19 BY MR. NISENBAUM:

20 Q. But, I mean --

21 A. I -- I -- I don't believe I've ever had an --
22 never used my OC spray. I've used my Taser. I've used
23 distraction blows. I've been on the ground arresting
24 people and, you know, getting them in custody, but this
25 is the first time I've ever been involved in a critical

1 incident.

2 Q. Okay. How many times have you been trained on
3 how to avoid asphyxiating people during restraint to
4 your best recollection?

5 MR. FINE: Vague and ambiguous.

6 THE WITNESS: I -- I can't even estimate. I
7 can't even estimate. I mean, out of 20-plus years, I
8 mean, I can't even estimate.

9 BY MR. NISENBAUM:

10 Q. Is that a part of your annual training?

11 A. Part of the advanced officer school, defensive
12 tactics and, you know, get it done, you know, and you
13 don't want to -- you want people -- you want everyone to
14 go home. We want to go home. We want them to go home.

15 Q. And have you been trained that the standard is --
16 of whether or not use of force is reasonable is based on
17 a reasonable officer's standard, not a subjective intent
18 standard? Have you heard of that?

19 A. Yeah. Yes, I have.

20 You have to have a reasonable standard, and the
21 thing is, is, you know, my standard is -- my standard
22 was to go to work, help people out, and go home. And,
23 you know, this was probably one of the worst days in my
24 career.

25 Q. I could imagine. I'm not saying otherwise. I'm

1 trying to understand your training and how you -- you
2 know, how your training impacted your job, especially on
3 this day.

4 And so you have been trained that the standard
5 that -- of -- by which your use of force is measured is
6 an objectively reasonable officer standard, correct?

7 A. Yes.

8 Q. Okay. And you've also been trained that an
9 officer's subjective intentions can be irrelevant to
10 that analysis, correct?

11 A. Can you rephrase that? I don't quite understand
12 what you just said.

13 Q. Have you heard that term "subjective intentions,"
14 in your training -- or subjective intent?

15 A. I've heard subjective intent, yes.

16 Q. Okay. And you've heard that with respect to the
17 reasonableness of the use of force, right?

18 A. Yes.

19 Q. From a case called Graham v. Connor, you've
20 probably heard of, right?

21 A. Yes.

22 Q. Okay. And so you've heard that in training, that
23 whether your intentions are good, bad, or indifferent is
24 irrelevant to the analysis of whether your use of force
25 was reasonable, correct?

1 A. Yes.

2 Q. Okay. Your use of force is measured by what it
3 was and what the circumstances were, period, right?

4 A. Yes.

5 Q. Okay. Thank you.

6 So when you say it's the arrestee's choice with
7 respect to the force that you use, isn't it true that
8 you're trained in the level of force you can use with
9 respect to a person's actions based on the totality of
10 the circumstances?

11 A. I'm trying to --

12 MR. FINE: Yeah, that's vague and ambiguous.

13 THE WITNESS: Yeah. I --

14 MR. FINE: You can answer, if you understand.

15 THE WITNESS: I don't truly understand it.

16 Can you, maybe, rephrase it more simplistically?

17 BY MR. NISENBAUM:

18 Q. Have you been trained in the term "totality of
19 the circumstances," same case, Graham v. Connor?

20 A. Yes.

21 Q. Okay. What does that mean?

22 A. Well, I -- to me, that's kind of -- you know,
23 it's kind -- it's kind of -- I don't know. Maybe it's
24 vague to me. I'm not sure, because the totality of the
25 circumstances, you know, they don't matter if you break

1 the law, if you got to go to jail, you got to go to
2 jail, you know, so -- but you don't give up your ground.
3 You don't -- you don't -- you know, okay. You're going
4 to -- you're going to resist me. I'm going to step back
5 now.

6 Q. But you've also been trained in something called
7 Tennessee v. Garner, right? So if a person is fleeing
8 from you, and they do not present an imminent threat of
9 serious bodily harm or death to anyone and they're
10 fleeing from you, you can't shoot them, right?

11 A. Absolutely not.

12 Q. Right.

13 Even though they might have to go to jail, right?

14 A. Correct.

15 Q. So whether or not a person is going to get
16 arrested doesn't justify every single use of force,
17 correct?

18 A. That's -- you know, the thing is, there's been
19 many times where people got away from me, and they got
20 away from me.

21 Q. I understand.

22 A. You know, the thing is --

23 Q. Okay. But let me ask you this: Just because a
24 person has to go to jail because you believe a person
25 has to go to jail, that doesn't mean you can use

1 whatever force you feel like against them, correct?

2 A. That is correct.

3 Q. Okay. It is still an objectively reasonable
4 amount of force based on the totality of the
5 circumstances, correct?

6 A. Correct.

7 Q. All right. And so when you say an arrestee's
8 choice, and it's their decision, with respect to the
9 amount of force you use, isn't it true that you've been
10 trained in responding to people who are emotionally
11 disturbed?

12 A. Yes.

13 Q. There's a whole learning domain, post-learning
14 domain on the subject, correct?

15 A. Yes.

16 Q. And you've been trained in something called
17 "de-escalation," correct?

18 A. Yes.

19 Q. What is de-escalation?

20 A. De-escalation is, you know, you could use ruses
21 to get compliance, you -- talking to people, but ruses
22 are part of the de-escalation, and it's -- you're
23 allowed to use a ruse in order to overcome resistance.

24 Q. That wasn't my question. I asked you what -- I
25 understand with respect to this incident, believe me, I

1 have read your interview. I've read them all, so I know
2 what you're referring to specifically, but I'm asking
3 you about your training.

4 What is de-escalation?

5 A. It's to try to gain compliance by, you know,
6 verbally trying to talk, you know, speak to somebody,
7 you know, if they're on a level 10, just try to talk
8 them down to a level 5 and keep trying to build a
9 rapport with them.

10 Q. And this is particular -- particularly true when
11 you're dealing with an emotionally disturbed person,
12 correct?

13 MR. FINE: Incomplete hypothetical. Calls for
14 speculation. Vague and ambiguous.

15 THE WITNESS: You have to -- you have to know
16 that the person is emotionally disturbed at the time.

17 BY MR. NISENBAUM:

18 Q. Sometimes it's just obvious, isn't it?

19 MR. FINE: Same objections.

20 THE WITNESS: It can be sometimes.

21 BY MR. NISENBAUM:

22 Q. Wasn't it obvious with Mr. Gutzalenko that he was
23 in a -- in an impaired state of mind?

24 A. I did not know initially what was going on with
25 him. I saw his bruised head. I saw the dried vomit. I

1 saw the blood on -- the blood on his hands.

2 Q. And did you think -- did you form an opinion or
3 belief that he was intoxicated?

4 A. Well, the first opinion I formed is I already
5 knew we had two callers. He had done something at a gas
6 station. And then he had -- was vandalizing a furniture
7 store --

8 Q. Okay.

9 A. -- you know, and I didn't have initial contact
10 with him. I was secondary contact. And Officer Tran
11 was already speaking to him, but Officer Tran was trying
12 to get him to comply and having him sit up and, you
13 know --

14 Q. All right.

15 A. So the thing is -- but as it came along, that's
16 why I said we're going to probably have to 5150 him,
17 because, you know, I could see his injuries and, you
18 know, he could -- I felt like he couldn't care for
19 himself at that moment.

20 Q. Are you reading my notes? I don't think they're
21 visible.

22 My next question, you said 5150, so what is a
23 5150?

24 A. That's Welfare and Institution Code for a 72-hour
25 detainment, which requires a police report and a triple

1 K form explaining why the person is danger to self and
2 others or gravely disabled.

3 Q. Okay. So there are three categories for a 5150,
4 right?

5 A. Oh, it's been a while since I filled one of those
6 out. Those are the ones I can remember. I also know
7 there's a -- you know, and basically some danger to
8 self, danger to others, unable to care for each other,
9 or they used to have a dependent adult, but I don't know
10 if they took that one off or not anymore.

11 Q. Yeah.

12 But -- and that is typically by reason of
13 basically a mental health emergency, right?

14 A. Yes.

15 Q. Okay. In this case, you formed an opinion that
16 Mr. Gutzalenko was suffering from a mental health
17 emergency, correct?

18 A. Yes.

19 Q. Okay. When did you form that opinion?

20 A. Well, whenever I started to get to know him,
21 yeah, talked to him more, and the way he was talking, I
22 thought he was under the influence of drugs because I
23 wanted to maybe get Narcan to -- in case he needed it,
24 but the thing is, with his cuts, his behaviors, you
25 know, spending more time with him, you could see there

1 was definitely a mental health issue, but he was
2 actually -- he couldn't be turned loose because his
3 actions were showing he was a danger to others.

4 Q. Okay. But that's by a reason of a mental
5 disability, correct?

6 A. Yes. But we can't turn somebody like that out to
7 the public.

8 Q. I didn't say -- when did I say that you could?

9 A. Well, I'm just saying, but, you know, he had --
10 he had a mental health issue, but, you know, the thing
11 is, is he's already demonstrated a propensity for
12 destruction and violence.

13 Q. So you've been trained that a person's mental
14 health emergency or their mental disability is a factor
15 to consider in the use of force against them, correct,
16 in terms of the reasonableness of the use of force,
17 correct?

18 MR. FINE: Incomplete hypothetical. Sorry, Ben.
19 Incomplete hypothetical.

20 (Reporter clarification.)

21 THE WITNESS: You -- so you have to -- so you try
22 to not use force against certain people, elderly,
23 disabled people like, you know, physical disabilities,
24 elderly physical disabilities, young children.

25 ///

1 BY MR. NISENBAUM:

2 Q. Well, again, my question is this: You had been
3 trained that the use of force under what you understand
4 to be the standard of *Graham v. Connor*, the
5 reasonableness of the use of force based on the totality
6 of the circumstances, one of those circumstances where
7 it exists is a person's mental impairment, their
8 emotional disturbance, their mental health emergency,
9 whatever you want to call it, that's a part of the
10 totality of circumstances, correct?

11 A. Yes.

12 MR. FINE: Incomplete hypothetical.

13 BY MR. NISENBAUM:

14 Q. And so it's one thing if you're talking to
15 someone who's totally sober, totally acting normal, and
16 you give them an order as compared to a person who might
17 be heavily intoxicated, who might be having a mental
18 health emergency, who appears to be having one and maybe
19 hallucinating, maybe fearful, maybe paranoid, all those
20 things. You're trained that they react differently than
21 a totally sober person or at least to expect a different
22 reaction and not expect a reasonable reaction from them,
23 correct?

24 MR. FINE: Incomplete hypothetical. Vague and
25 ambiguous.

1 THE WITNESS: Yes.

2 BY MR. NISENBAUM:

3 Q. Okay. And that is part of what informs the
4 de-escalation analysis, "Take the time to make the
5 time," you've heard that, right?

6 MR. FINE: Same objections.

7 THE WITNESS: Yes.

8 BY MR. NISENBAUM:

9 Q. Want to slow the situation down, right, if you
10 can?

11 A. Yes.

12 Q. Create time and distance if it's reasonable,
13 right?

14 MR. FINE: Same objections.

15 THE WITNESS: So can I answer that question, or
16 do you want to use one -- or one part? Because I think
17 I need to answer that question.

18 BY MR. NISENBAUM:

19 Q. Well, you can give me an answer and then say
20 whatever else you have to say.

21 A. Yes, but once you gain ground, you don't give up
22 ground.

23 Q. Where did you learn that?

24 A. You -- you don't -- if -- you know, if you have a
25 handcuff on somebody, you don't let go of the handcuffs.

1 You -- you -- you -- you got to keep control of that
2 handcuff. Yes, so --

3 Q. Where did you learn this is my question.

4 A. In the -- in the academy. You don't give up your
5 ground. You -- if you already -- if you're already in
6 the situation and already hands on, you don't, you know,
7 call a time-out like you time-out and then, you know,
8 you have to -- you -- where -- wherever you gain ground,
9 you stay on course.

10 Q. Okay. Even if creating time and distance would
11 be reasonable under the circumstances, you don't do that
12 if you've already gone hands on; is that correct?

13 A. You don't --

14 MR. FINE: Incomplete hypothetical. Misstates
15 testimony.

16 THE WITNESS: If -- if you're already hands on,
17 you -- you have -- you have to complete it. You don't
18 let go and then cause somebody that's already agitated.
19 You're just going to give them more ground to be more
20 agitated and fight even more. You -- you can't give it
21 up. That's a danger to every officer on scene and even
22 members of the public.

23 BY MR. NISENBAUM:

24 Q. Okay. You mentioned previously, you know, he
25 could have a gun. There could be a gun in -- in

1 someone's belt. There could be anything, right? You're
2 trained not to speculate, though, correct?

3 MR. FINE: Vague and ambiguous. Incomplete
4 hypothetical.

5 THE WITNESS: You're trained to not speculate,
6 but you're also trained that hands can kill you, because
7 they can reach for a weapon or anything on the street.

8 BY MR. NISENBAUM:

9 Q. Sure.

10 But I assume you did not see a gun on the street
11 apart from what was in officers' holsters, right?

12 A. Right. But I also didn't get a full search on
13 his front waistband.

14 Q. Okay. Was there a report of a gun?

15 A. No.

16 Q. Okay. So you had no specific facts that
17 Mr. Gutzalenko was in possession of a gun or any other
18 weapon, correct?

19 A. No. You just have to assume everybody is armed.

20 Q. A bazooka? With what? So you say you have to
21 assume. It's one thing to keep in mind that, sure,
22 anything is possible. It's another thing to
23 affirmatively assume that a person is armed with a
24 weapon.

25 Which of those are you trained to do?

1 A. Until you know that the waistband is clear, then
2 that -- they can't reach for nothing, you just have to
3 assume that you want -- you don't want anybody reaching
4 for their waistband, so you -- you want their hands
5 clear.

6 Q. So you are trained to make affirmative
7 assumptions that a person is armed with any and every
8 type of weapon that could conceivably fit where you
9 haven't searched unless until you've actually searched
10 it, is that your testimony?

11 MR. FINE: Misstates testimony. Incomplete
12 hypothetical.

13 THE WITNESS: We are trained hands are the
14 number 1 killer, and until you assure an area is safe,
15 you just have to be cautious to make sure that they're
16 not reaching for something that can harm you.

17 BY MR. NISENBAUM:

18 Q. Well, being cautious is a different question.
19 That's why I asked the question earlier. It's one thing
20 to keep in mind what the possibilities could be. It's
21 another thing to make affirmative assumptions.

22 Do you understand that distinction?

23 A. Yes.

24 Q. Okay. It's fair to say that your training is to
25 keep in mind what the possibilities could be as opposed

1 to act on affirmative assumptions without any specific
2 facts to support those assumptions, correct?

3 A. Yes.

4 Q. Okay. Thank you.

5 All right. Now, a 5150 is a seizure; is that
6 right?

7 MR. FINE: Calls for a legal --

8 THE WITNESS: 5150 --

9 MR. FINE: -- conclusion.

10 BY MR. NISENBAUM:

11 Q. Based on your --

12 MR. FINE: Misstates testimony.

13 THE WITNESS: 5150 is a -- is a medical -- my --
14 a seizure or medical detainment of a person.

15 BY MR. NISENBAUM:

16 Q. In other words, a person is not free to leave
17 when you're conducting a 5150, correct?

18 A. Correct. And there's a box on the 5150 form that
19 you check saying that they couldn't -- they're to be
20 notified before they are released because they could be
21 facing criminal charges.

22 Q. Okay. So it is -- a 5150 is a law enforcement
23 detention as you understand the definition, correct?

24 A. Medical personnel also are -- can do 5150s.

25 Q. Well, I'm well aware. I'll get to the medical

1 part of this. I promise you.

2 But you agree that a 5150 is, as you understand
3 the term, a seizure where the person is not free to
4 leave, correct?

5 A. Yes.

6 Q. And it has to be reasonable under the
7 circumstances, correct?

8 A. Yes.

9 Q. And it has to be conducted reasonably under the
10 circumstances, correct?

11 A. Yes.

12 Q. In other words, it has to conform to the
13 Fourth Amendment requirements, correct?

14 A. Yes.

15 Q. Okay. Thank you.

16 That includes the use of force as well as how the
17 5150 is conducted, correct, at least your part of it?

18 A. Yes.

19 Q. All right. And you are authorized and trained in
20 how to perform 5150, correct?

21 A. Yes.

22 Q. And that -- and you are trained to expect that --
23 well, strike that.

24 You are trained to not be surprised when you're
25 performing a 5150 of a person who appears to be in the

1 midst of a mental health emergency not to be surprised
2 when they are acting in a totally irrational manner,
3 right?

4 MR. FINE: It's vague and ambiguous.

5 THE WITNESS: That was quite a long question,
6 Counsel.

7 Can you shorten that question up a little bit?

8 BY MR. NISENBAUM:

9 Q. When you do a 5150 of a person who appears to be
10 suffering a mental health injury, your training is to
11 not be surprised when they act in a totally
12 off-the-wall, wacky, irrational manner, right?

13 MR. FINE: Same objection.

14 THE WITNESS: Each person reacts differently, so
15 it's kind of hard to answer that with a yes or no.

16 BY MR. NISENBAUM:

17 Q. Well, I'm saying, you wouldn't -- your training
18 is, don't be surprised if that happens when you're doing
19 a 5150 of a crazy person?

20 MR. FINE: Same objection.

21 THE WITNESS: I mean, I don't know if they really
22 say don't be surprised saying it could happen.

23 BY MR. NISENBAUM:

24 Q. Okay. Has it happened to you before when doing a
25 5150?

1 A. It's happened a couple of times from what I
2 recall, but nothing --

3 Q. How many -- I'm sorry, I didn't mean to cut you
4 off.

5 A. No. Not -- I mean, nothing like really stands
6 out, but, you know --

7 Q. So how many 5150s have you done in your career?

8 A. I can't -- I -- I don't even want to guesstimate.
9 I mean, there's -- you know, there's a -- there's --
10 I've done quite a few.

11 Q. Would you say more than a hundred, less than a
12 hundred?

13 A. I would say somewhere around a hundred or more
14 mark.

15 Q. Okay. All right. And sometimes it's easy,
16 right?

17 A. Yeah.

18 MR. FINE: Vague.

19 THE WITNESS: I -- can we take a break real
20 quick? I got some background noise I need to really
21 take care of real quick.

22 MR. NISENBAUM: Not a problem.

23 THE WITNESS: So --

24 MR. FINE: Okay.

25 THE WITNESS: Five --

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 MR. FINE: Is five minutes okay?

2 THE WITNESS: Yeah, five minutes.

3 MR. FINE: Thank you, Ben.

4 MR. NISENBAUM: Sure.

5 (Off the record.)

6 MR. NISENBAUM: Can I have the last question I
7 asked read back, please?

8 (Record read.)

9 MR. NISENBAUM: And was there an answer?

10 THE REPORTER: No.

11 BY MR. NISENBAUM:

12 Q. Well -- and sometimes it's easy, right, when
13 dealing with a 5150?

14 MR. FINE: Vague.

15 THE WITNESS: Sometimes it can be, sometimes it
16 can't be. It's just kind of --

17 BY MR. NISENBAUM:

18 Q. Right?

19 A. People -- people are different. Each -- everyone
20 is different.

21 Q. And you accepted the responsibility of your job,
22 right, the rules that came with it?

23 A. Yes.

24 Q. And you were compensated for it, right?

25 A. Yes.

1 Q. Okay. Thank you.

2 So when a person refuses a 5150 that you're
3 trying to do, they're trying to resist it, you're
4 permitted to compel that 5150 to happen, correct, to
5 force it to happen?

6 A. Yes.

7 Q. Okay. And if you have to use force, that force
8 has to be reasonable during the 5150, correct?

9 A. Yes. The force has to be reasonable. It's
10 basically, you know, under the totality of the
11 circumstances as we've discussed earlier.

12 Q. Right.

13 Sometimes you've had occasion to interact with
14 paramedics during a 5150, I imagine.

15 Is that fair to say?

16 A. Yes.

17 Q. Is it -- does -- is that normally how a 5150 goes
18 if you actually wind up investigating the 5150 and
19 determining that the person meets one of the criteria?

20 A. Yes. Then you call for an ambulance.

21 Q. Okay. And the ambulance comes, right?

22 A. Yes.

23 Q. It's 99 times out of a hundred.

24 And so what's the process from there?

25 A. So after we call the ambulance?

1 Q. Yeah.

2 A. So ambulance gets there. We explain to them what
3 we have. We give them the paperwork. And sometimes if
4 it's a cooperative person with mental health issue, they
5 will -- we'll walk over with them. They'll give them a
6 gurney, and they'll belt them in, but if it's a
7 combative one, they will -- depending on how combative
8 they are, they will give them an injection if they're
9 super violent. But if they're just not super violent or
10 resisting, you know, sometimes they put soft straps just
11 for their safety.

12 Q. They put, what, soft straps? What are those?

13 A. It's on the gurney. It's kind of a -- kind of a
14 padded bracelet that they have on the gurney. And it
15 just kind of keeps, especially on 5150, that way, in
16 case they have a breakout in the back of the ambulance,
17 it just kind of keeps their -- their wrists and their
18 legs secured to the gurney so they can't kick or swing
19 or anything.

20 Q. So the paramedics, do you -- is a police officer
21 required to go with the paramedics when the person is
22 5150'd, and they take them to the hospital?

23 A. No.

24 Q. Okay. Now, the 5150 hold is a law enforcement
25 thing, right?

1 MR. FINE: Asked and answered. Vague and
2 ambiguous.

3 THE WITNESS: It's -- it's a tool for medical and
4 such as psychiatry, ER doctors, and law enforcement to
5 put someone on a hold if they are -- meet the criteria.

6 BY MR. NISENBAUM:

7 Q. Right. Of course.

8 And with respect to getting a person into custody
9 who is resistive, do you work with the paramedics to do
10 that?

11 MR. FINE: Incomplete hypothetical. Vague and
12 ambiguous.

13 MR. KANTER: Join.

14 THE WITNESS: What do you mean work with them?

15 BY MR. NISENBAUM:

16 Q. Well, there's a transfer at some point, it sounds
17 like, of -- of the person's custodial status from you to
18 the paramedics; is that right?

19 MR. FINE: Same objections.

20 MR. KANTER: Join. Misstates testimony too.

21 THE WITNESS: You -- we have interaction with
22 them because we are the first point of contact. We
23 complete the form. And then we explain to them and hand
24 the paperwork to them, so at that point, they take
25 custody of the individual. They usually introduce

1 themselves as a paramedic. And once they get them
2 secured on the gurney and leave, we -- we clear.

3 BY MR. NISENBAUM:

4 Q. Okay. But do they ask you to do things to
5 facilitate the -- the transport of the person to get
6 them ready to be transported? Is that typical?

7 MR. FINE: Incomplete hypothetical. Calls for
8 speculation. Vague and ambiguous.

9 MR. KANTER: Join.

10 BY MR. NISENBAUM:

11 Q. Give some directions?

12 A. What they ask us is to make sure they don't have
13 any weapons on them and, you know, clear their -- clear
14 their contents. If it's a large amount of contents,
15 they can only take so much, then we have to book the
16 large amount of contents into safekeeping until the
17 person is discharged from the hospital.

18 Q. Okay. If a person is handcuffed when the 5150 is
19 being done, are those handcuffs removed prior to them
20 being transported and custody being transferred to the
21 paramedics?

22 MR. FINE: Incomplete hypothetical. Calls for
23 speculation. Vague and ambiguous.

24 MR. KANTER: Join.

25 THE WITNESS: The times that I was on when

1 they -- when they were handcuffed, we sit them on the
2 gurney, and we would -- the paramedic would instruct us
3 which handcuff to take off so they can put the hand in a
4 soft restraint. And then we keep control of the other
5 handcuffed hand. And then when they -- they strap the
6 legs down and then they would come over, ask us to
7 remove the other handcuff, and then they put them in the
8 other soft restraint, so our handcuffs would come back
9 to us. And they would self-restraint them on the
10 gurney.

11 BY MR. NISENBAUM:

12 Q. Okay. And do paramedics in your experience in
13 any of the 5150s, have they ever directed you to, for
14 example, get the person under better control?

15 MR. KANTER: Objection. Incomplete hypothetical.
16 Vague and ambiguous. Overly broad.

17 MR. FINE: Join.

18 THE WITNESS: Well, they -- we usually try to
19 make sure that paramedics aren't in danger and, you
20 know, they ask us before, like, "Are" -- "are you" --
21 "can you guys just hold him here for a second? We're
22 going to go get the gurney." And we've had those
23 situations, but nothing like where I've been told you
24 need to get them under better control.

25 ///

1 BY MR. NISENBAUM:

2 Q. Do you have -- as a police officer, you've been
3 there on other occasions where a person gets sedated
4 during a 5150, right?

5 A. I have.

6 Q. I think you've described that that, you know,
7 sometimes they'll come and give them a shot to make them
8 calm down, right?

9 A. Yes.

10 Q. And it's your understanding that they're giving
11 them that shot to sedate them so that they don't become
12 resistive while they're in the paramedics control,
13 right?

14 MR. FINE: Calls for speculation. Incomplete
15 hypothetical.

16 MR. KANTER: Join. Overly broad.

17 THE WITNESS: It's -- they usually give it to
18 people that are violent or resisting. And they do that
19 to -- usually to calm them down for transport or sedate
20 them, yes.

21 BY MR. NISENBAUM:

22 Q. Are you familiar with the term "the good stuff"?
23 Have you heard that?

24 MR. FINE: Vague and ambiguous.

25 THE WITNESS: I guess I've heard all kinds of

1 stuff from -- you know, if they call pain medicine the
2 good stuff, they call -- I've -- you know, I'm not sure
3 what we're talk- -- talking about as a good stuff right
4 now if it's the shot, the sedation shot, or what are we
5 talking about?

6 BY MR. NISENBAUM:

7 Q. Well, have you heard -- in this incident, do you
8 recall someone saying right after the shot is given,
9 either right before or right after or during the shot
10 being given to Mr. Gutzalenko, someone saying, "Never
11 mind. You got that. That's the good stuff"?

12 A. I --

13 Q. Do you remember hearing that?

14 A. I don't remember hearing that. I don't remember
15 hearing that that day, but, I mean, I'm sure if I
16 watched my body camera footage, it was there. I could
17 probably hear it then, but I was -- I don't remember --
18 I don't remember hearing it right now, no.

19 Q. Okay. Well, let me ask you this: What role do
20 Richmond police officers in your experience and your
21 training, what role do they have in actually
22 administering medication to a subject?

23 A. We -- we don't administer any medication to a
24 subject only -- only Narcan, if it requires Narcan.
25 That's the only thing we're allowed to administer or

1 CPR.

2 Q. I -- I guess I asked what role.

3 I mean, my question is: Do you have a role in
4 facilitating of the administration of medication by
5 paramedics in the course of a 5150 when a person has to
6 be sedated?

7 A. No. We don't have any -- we don't have say in
8 that.

9 Q. I understand you don't have say in that.

10 But do you have a role physically, like holding
11 the person down while the person gets sedated or moving
12 the person's shirt so the paramedic can administer the
13 shot?

14 MR. FINE: Incomplete hypothetical. Calls for
15 speculation. Vague and ambiguous. Overbroad.

16 MR. KANTER: Join.

17 THE WITNESS: There -- once the paramedics get on
18 scene, they're -- they control the scene, so they make
19 the decision, so there have been times that we've
20 actually -- somebody is combative, and they injected
21 them while we have them detained. It's not -- it's not
22 an every -- it's not always -- always the case.

23 BY MR. NISENBAUM:

24 Q. My question, again, so you have a clear mind, is
25 there a role for police officers at City of Richmond

1 during a 5150 where a person gets sedated by paramedics,
2 is there a role in actively participating in the
3 injection itself?

4 MR. FINE: Incomplete hypothetical. Calls for
5 speculation. Overbroad. Vague and ambiguous.

6 MR. KANTER: Join. Also, expert opinion
7 testimony.

8 MR. FINE: Join.

9 BY MR. NISENBAUM:

10 Q. Again, I'm talking about your experience and your
11 knowledge and understanding of Richmond Police
12 Department policy.

13 A. There's not a --

14 MR. KANTER: Same objection.

15 THE WITNESS: Oh, sorry.

16 MR. FINE: Join. Same objections.

17 THE WITNESS: There's not a policy forbidding us
18 from standing by or holding a -- a detainee down while
19 we -- paramedics clean up wounds or inject medications.
20 There's not a policy. There could be one now. I don't
21 know, but as of that date, there was not one.

22 BY MR. NISENBAUM:

23 Q. Okay. Is it fair to say that at the time of this
24 incident, police officers were permitted in order to
25 facilitate the 5150 to assist a paramedic in the

1 injection of sedating medicine?

2 MR. FINE: Same objections.

3 MR. KANTER: Join.

4 THE WITNESS: There's no -- at that time, there
5 was no policy preventing it, so --

6 BY MR. NISENBAUM:

7 Q. You understood that to be allowed, correct?

8 A. Yes.

9 Q. Okay. All right. And this is -- and I'm talking
10 about a circumstance where the person was refusing
11 medical care and didn't want medical treatment and
12 appeared to not want to go along with the 5150. You
13 understand that, correct?

14 MR. FINE: Same objections.

15 MR. KANTER: Join.

16 THE WITNESS: Even if the subject would have
17 refused medical treatment, we -- he still would have had
18 to receive medical treatment because of his obvious
19 injuries on his hand and the -- you know, you can't take
20 him to jail with injuries such as that. They have to be
21 cleaned up and inspected by medical personnel, so either
22 way, there would have been medical involved in that
23 incident.

24 BY MR. NISENBAUM:

25 Q. My question is -- well, strike that.

1 MR. NISENBAUM: Can you read the question back?
2 It's better than me rephrasing it.

3 (Record read.)

4 MR. FINE: Same objections.

5 MR. KANTER: Join.

6 BY MR. NISENBAUM:

7 Q. So I'm talking about in that situation where a
8 person is being forcibly sedated, they're -- obviously,
9 they don't want it. It's clear -- they have made it
10 clear that they -- that they're refusing medical care.
11 You're forcing the medical care to happen, correct?

12 MR. FINE: Same objections.

13 MR. KANTER: Join. Argumentative.

14 BY MR. NISENBAUM:

15 Q. That it is -- that is the very purpose of the
16 5150, right?

17 MR. FINE: Same objections.

18 MR. KANTER: Join.

19 THE WITNESS: The purpose of the 5150, yes, he
20 was showing a danger to self and others, so the 5150 was
21 the decision to be made.

22 BY MR. NISENBAUM:

23 Q. So you are compelling medical care to occur in
24 spite of the person -- well, strike that.

25 In this situation with Mr. Gutzalenko, it's fair

1 to say that you were compelling that he received medical
2 treatment even though he had refused it and said he
3 didn't want it, correct?

4 A. Yes. Because of the circumstances, danger to
5 self and others.

6 Q. Okay. All right. Now, let me ask you this: Is
7 there training or policy that you're aware of that says
8 that you should not -- I know I asked it more general
9 question, but I'll be much more specific.

10 When medical treatment is being rendered to a
11 person who's just been arrested or detained, whether
12 it's for 5150 or otherwise, and the person is getting
13 medical care, is there a line that you're trained in in
14 which officers are to avoid getting involved in the
15 actual administration of the medical treatment when the
16 paramedics are present and they're the ones doing the
17 treatment?

18 MR. FINE: Incomplete hypothetical. Vague and
19 ambiguous. Overbroad. And calls for expert opinion.

20 MR. KANTER: Join.

21 BY MR. NISENBAUM:

22 Q. In other words, it's one thing to simply help
23 hold a person down. It's another thing to involve
24 yourself in the administration of the sedation, the
25 actual administration, for example, by removing clothing

1 to facilitate the injection. That's something -- is
2 that something that should be left to the paramedics
3 based on your training, or is it typical for police
4 officers at Richmond Police Department to do that?

5 MR. FINE: Same objections.

6 MR. KANTER: Join.

7 THE WITNESS: Unfortunately, sometimes we have to
8 be involved. We don't do the administering ourselves,
9 but in order to prevent the paramedic from becoming a
10 victim of a battery or some kind of assault, we have to
11 make sure they're just as safe as the person we are
12 sending to the hospital.

13 BY MR. NISENBAUM:

14 Q. That wasn't my question. I asked a very specific
15 question.

16 Were officers at the time of this incident at
17 Richmond Police Department, were they permitted to
18 remove clothing to expose an area for injection of
19 sedation by a paramedic?

20 MR. FINE: Same objections.

21 MR. KANTER: Join.

22 THE WITNESS: And there wasn't a policy stating
23 that we cannot aid medical and removal of any kind of
24 clothing, but there's policy stating we can't administer
25 medication.

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 BY MR. NISENBAUM:

2 Q. Okay. Except for Narcan?

3 A. Correct.

4 Q. Okay. Probably things like an EpiPen also, I
5 assume?

6 A. No.

7 Q. You can't even do an EpiPen?

8 A. No.

9 Q. Okay. All right. You know the term "integral
10 participant"? Do you know what that means?

11 A. I do not, actually. I don't recall hearing that,
12 if I have, it's been some time.

13 Q. Well, fair enough.

14 All right. Do you recall people at the scene
15 telling Mr. Gutzalenko, "Don't worry. You're not going
16 to go to jail"?

17 A. Yes.

18 Q. And you were one of those people saying that,
19 right?

20 A. When I was trying to find out what kind of drugs
21 he was under to try to -- because I -- I didn't care if
22 he was under the influence of drugs. I just wanted to
23 make sure we knew how to counteract it. We have a
24 Narcan.

25 Q. I know you were -- I know you in particular were

1 very concerned in asking him, had he taken any fentanyl,
2 right?

3 A. Yes.

4 Q. Okay. And Narcan would be effective for opiate
5 drugs, but that's all it's effective for to your
6 knowledge, correct?

7 MR. FINE: Calls for speculation. Calls for
8 expert opinion.

9 THE WITNESS: We've actually used Narcan on
10 people that have fentanyl overdoses and brought them
11 back.

12 BY MR. NISENBAUM:

13 Q. Fentanyl is an opiate?

14 A. Well, I --

15 Q. Yeah.

16 A. -- I've been out of the drug game a long time.

17 Q. I hear you. Well, I wasn't implying you were
18 ever in the drug game.

19 A. I did not know -- I did narcotics and all that
20 for Richmond PD. I was a part of the street --

21 MR. FINE: Thank you for clarifying, Officer.

22 THE WITNESS: Yeah, I know.

23 BY MR. NISENBAUM:

24 Q. You did narcotics -- wait. Wait.

25 You did narcotics?

1 A. I worked the narcotics street team.

2 Q. When you said you did narcotics, that could be
3 misconstrued.

4 A. Yeah. Well, I -- I worked with the narcotics
5 street team where --

6 Q. I got it.

7 A. -- assignments.

8 Q. You weren't actually using drugs. You were
9 working narcotics?

10 A. No. I like my --

11 Q. You were working, not doing narcotics?

12 A. Right.

13 Q. Got it.

14 And smile for me real quick. You have all your
15 teeth? Well, gotcha. Fair enough.

16 A. Some coffee stains other than that.

17 Q. Me too.

18 All right. So the call with the -- with
19 Mr. Gutzalenko, you became aware of it because there was
20 a report over the radio, correct?

21 A. Yes.

22 Q. All right. And the report was basically someone
23 who was vandalizing the store; is that right?

24 A. It came from a -- there was a gas station and
25 then a furniture store calling about --

1 Q. Okay.

2 A. -- the same individual.

3 Q. And what was he doing?

4 A. I want to say, if I -- at the gas station, he
5 stole something or, you know, at -- that one, I'm not a
6 hundred percent on, but the furniture store, that he was
7 currently in the store breaking items, and the store
8 owner or the store employee called 911 because they were
9 afraid the person was going in there basically
10 vandalizing whatever they could.

11 Q. Right.

12 Were these crimes that would have caused you to
13 reasonably believe that Mr. Gutzalenko was a threat of
14 serious bodily harm or death?

15 A. To the public?

16 Q. Anyone.

17 A. Well, if I walk -- so the gas station, that could
18 have been -- that might have been an Estes robbery, I'm
19 not sure. I did -- I didn't deal with that one, but it
20 could --

21 (Reporter clarification.)

22 THE WITNESS: Estes, E-S-T-E-S.

23 So it was basically shoplifting with use of force
24 that kind of validates into a robbery. But, you know,
25 there's that, and then inside the furniture store where

1 he's breaking items and throwing items about. That
2 could definitely be a danger. It takes one flying
3 object to harm somebody.

4 BY MR. NISENBAUM:

5 Q. Okay. I guess -- well, was there an assault or
6 battery that had been reported?

7 A. I don't recall.

8 Q. You don't recall there being one reported,
9 correct?

10 A. Well, it wasn't even my call. I just responded
11 because I was closer.

12 Q. I get that.

13 But I assume that you pulled up the CAD and
14 looked at what the entries for the call were when you
15 responded?

16 A. No, actually, because I -- Officer Tran said he
17 had the subject aside, and then I couldn't get a hold of
18 him on the radio, so I -- I turned my lights and siren
19 and I responded to that. I try not to keep my eyes on
20 the computer while I'm driving the road.

21 Q. All right. Well, let me ask you more clearly,
22 then.

23 You had no report that anyone had been injured or
24 that anyone had been threatened with serious bodily
25 injury or harm, correct? No specific reports of that?

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 A. I can't recall, and I've -- I don't have the CAD
2 notes. I didn't review CAD before this either.

3 Q. Okay. I could pull it up, but it is what it is.
4 And --

5 A. Okay.

6 Q. -- the fact that you can't recall is probably a
7 good thing, you know, because there was no such
8 information.

9 A. Okay.

10 Q. All right. Was there a report that he was armed
11 with any type of weapon, Mr. Gutzalenko?

12 A. No.

13 Q. Okay. Was there -- well, strike that.
14 You attached yourself to the call?

15 A. Yes.

16 Q. And that's because of how close you were?

17 A. Well, Officer Tagorda was initially broadcasted
18 to cover Officer Tran, but he broadcasted where he --
19 where he was coming from, which was -- I was a lot
20 closer than Officer Tagorda was, so that's why I
21 responded.

22 Q. Right.

23 So you responded, and you didn't have to drive
24 very far to see them, right?

25 A. I was coming from 24th and Evans, and they were

1 over in San Pablo and Solano, so it was -- it wasn't
2 super far, but it wasn't right next door either.

3 Q. Right.

4 So a mile to a mile and a half?

5 A. Could be, maybe give or take a little bit more.
6 That's what I estimated, but that's just an estimation.

7 Q. I'm only going by your estimation.

8 A. Yeah, right.

9 Q. And in that time you received further updates
10 over the radio about what was happening, right?

11 A. Yes.

12 Q. Okay. And what updates did you receive that you
13 recall?

14 A. Officer Tran, he's walking away and trying to
15 catch up to him, and then I believe Officer Tran said
16 that he was out with the subject. And I -- when I got
17 on scene, I couldn't -- I tried to find out where he was
18 and he didn't respond, and then I ended up locating him
19 standing next to -- I don't want to butcher his last
20 name, but -- so I'm just going to call him the detainee.

21 Q. It's not that hard, Gutzalenko.

22 A. Gutzalenko. I just don't want to say it
23 improper, so he was -- Gutzalenko was sitting on the
24 ground. Officer Tran was standing next to him.

25 Q. Okay. So I have various body cameras. I'm going

1 to open Officer Tagorda's body cam. This is the file
2 titled "Officer Tagorda," in a parenthesis, "Conf" --
3 that's C-O-N-F for confidential -- "City, underscore,
4 1040, close paren, dot MP4."

5 A. It's a match up.

6 Q. All right. I know this is not your body cam, but
7 it does depict actions that I'm going to ask you
8 questions about, so let me go ahead and share this.

9 All right. Can you see what's on my screen?

10 A. Looks like the inside of a hand.

11 Q. I'm sure you see that a lot with these body cams,
12 right?

13 A. Yeah.

14 Q. And that's because, you know, when you turn it on
15 you hit the body camera, right?

16 A. Yes.

17 Q. To activate it?

18 A. Yes.

19 Q. So like I said, this is Officer Tagorda. I
20 believe that you're already on scene.

21 A. Yes.

22 Q. I'm going to start here.

23 By the way, the order of arrival of police
24 officers, as you understand it, was Officer Tran first,
25 then you, then Officer Tagorda, correct?

1 A. Yes.

2 Q. Do you have a recollection of when the ambulance
3 arrived? Was it after Officer Tagorda arrived?

4 A. I think it was after Officer Tagorda arrived, if
5 I remember correctly.

6 Q. Okay. All right. I think you're correct.

7 Anyway, I'm going to hit play, and what I'm going
8 do is skip forward to certain points and ask you
9 questions. I'll pause it when I do. Okay?

10 A. Yep.

11 Q. All right. We are now paused. It is -- I'm
12 paused at four seconds which on the time stamp is
13 18:44:48 of the actual time stamp.

14 Do you see that up here?

15 A. Yes.

16 Q. Okay. And this is you back in your 280-pound
17 glory, right?

18 A. Yeah, that would be me.

19 Q. Okay. I mean, you've definitely lost a lot of
20 weight. All right.

21 And do you recall -- I assume you recall this
22 scene right here, what's being depicted, right?

23 A. Yes.

24 Q. Okay. And so this is Mr. Gutzalenko who's
25 facedown on the ground, right?

1 A. Yes.

2 Q. Classic prone position?

3 MR. FINE: Misstates the video.

4 THE WITNESS: No. Because his head is up and his
5 arms are kind of like pulled under him like this
6 (indicating), so it's not a classic prone position.

7 BY MR. NISENBAUM:

8 Q. All right. It's the same prone position.

9 And who's the officer who's in contact with him?

10 A. That is Officer Tran.

11 Q. Okay. And do you know what the item is on the
12 ground here? Can you see my cursor?

13 A. That would be his wallet where I took his ID out
14 of and a couple of cell phones and a bottle cap.

15 Q. Okay. All right. Now, up to this point, he
16 hasn't been handcuffed yet, correct, Mr. Gutzalenko?

17 A. No.

18 Q. Is this the position he was in, he had his arms
19 underneath him?

20 A. At what point?

21 Q. Well, when we're -- when we see him here, where
22 his hand is underneath his body, or under his chest or
23 something.

24 A. Kind of looks like he was kind of -- his hands
25 were kind of in front of him, and he was kind of raised

1 up and moved around, so his hands were -- his hands were
2 visible, if I recall.

3 Q. Do you know about how long after you arrived on
4 the scene? This is by estimate.

5 A. How long he was like that?

6 Q. Well, no. You've arrived on scene sometime
7 before this. How long before this did you arrive by
8 estimate? Is it five minutes, approximately? If you
9 don't know --

10 MR. FINE: Calls for speculation.

11 THE WITNESS: I don't know. I don't want to --
12 BY MR. NISENBAUM:

13 Q. Okay. And you can see the back of
14 Mr. Gutzalenko's waistband. His shirt is up somewhat,
15 correct?

16 A. Yes.

17 Q. And you can actually see his bare skin at the --
18 his lower back and sides, correct?

19 A. Yes.

20 Q. And from what we can see, there's nothing that
21 would indicate that there's anything in the part of the
22 waistband that you can see, correct?

23 MR. FINE: Calls for speculation.

24 THE WITNESS: Definitely can't see anything on
25 the sides or the back.

1 BY MR. NISENBAUM:

2 Q. Okay --

3 A. His abdomen on the ground.

4 Q. Right.

5 His abdomen is on the ground, and if you were
6 conducting a search of him, you would be able to
7 actually -- if you were concerned about him having a
8 weapon in his waistband, one of either you or Officer
9 Tran would be able to reach around the front of his body
10 on either side. Correct?

11 MR. FINE: Calls for speculation.

12 THE WITNESS: Not with -- not in that position
13 because he had a little bit of girth on him so that was
14 pushed against the ground.

15 BY MR. NISENBAUM:

16 Q. Well, you can certainly reach around for most of
17 the front, if not all, right?

18 MR. FINE: Same objection.

19 BY MR. NISENBAUM:

20 Q. Was that a yes or no?

21 A. We were trying to -- we weren't sure where this
22 was going to go, and so before he got in the ambulance,
23 we would have definitely searched -- we would have
24 searched his waistband and its contents to make sure
25 nobody would be harmed.

1 Q. I understand that.

2 But if you were concerned at this moment that
3 there was a gun in his waistband or a knife, you
4 could've done as much of a search as permitted by his
5 positioning, correct?

6 MR. FINE: Calls for a legal conclusion. Calls
7 for expert testimony. Calls for speculation.

8 THE WITNESS: Without reaching we'd have to roll
9 him over to get into his waistband, and there was no
10 concern at the moment until he started tucking his hands
11 underneath.

12 BY MR. NISENBAUM:

13 Q. So he hadn't started tucking his hands underneath
14 yet; is that right?

15 A. That's correct.

16 Q. Okay. But there's nothing that prevented you
17 from checking as much of his waistband as you could have
18 at this time, correct?

19 MR. FINE: Same objections.

20 THE WITNESS: I mean, I -- I don't know. It's --
21 BY MR. NISENBAUM:

22 Q. Is it fair to say you just didn't think about
23 doing it at that time?

24 A. At that time, yes. It's safe to say I didn't
25 think about doing it at that time. You know, his hands

1 were visible, so they -- you know, Officer Tran was
2 focused on him. I was trying to get him -- run him out.

3 Q. Okay. All right. I'm going to hit play. We're
4 at four seconds.

5 Okay. Now we're at eight seconds, and
6 Mr. Gutzalenko is kind of turned on his right side.

7 Do you see that?

8 A. Yes.

9 Q. Okay. And exposing the front of his body in your
10 direction, correct?

11 A. Yes.

12 Q. Okay. Again, nothing more that we can tell that
13 would be in his waistband, right?

14 MR. FINE: Calls for speculation.

15 THE WITNESS: Well, yes, but I think I was
16 focused on him and also Tran, and I did not look at his
17 waistband.

18 BY MR. NISENBAUM:

19 Q. It looks like someone reached into his pocket and
20 pulled out his wallet, right?

21 A. That was me.

22 Q. Okay. Was that this pocket where the -- where
23 you could see the inside of the pocket?

24 A. That's where I saw the bloody cell phone was.

25 Q. Okay. All right. But to your knowledge, there's

1 no search of the front of his body at this point either,
2 correct?

3 A. Correct.

4 Q. Okay. I'm going to hit play. We're at eight
5 seconds.

6 Of course, I'm pausing it at 11 seconds.

7 Someone is putting gloves on, a person whose body
8 camera -- it is -- that's Officer Tagorda, correct?

9 A. Yes.

10 Q. We're at 11 seconds.

11 By the way, I'm pausing at 20 seconds. There's a
12 siren in the background.

13 Is that the ambulance approaching?

14 MR. FINE: Calls for speculation.

15 THE WITNESS: I'd have to see it.

16 BY MR. NISENBAUM:

17 Q. Okay. By my notes, the ambulance arrived at 1:42
18 or so into this. This is about a minute and 20 seconds
19 away.

20 Would that be consistent with the sound of the
21 siren you hear?

22 MR. FINE: Calls for speculation.

23 THE WITNESS: Yes. I could hear the siren, yes.

24 BY MR. NISENBAUM:

25 Q. Okay. We're at 20 seconds, continuing.

1 Pausing it at 40 seconds.

2 Someone said, "All right. We'll deal with you in
3 a minute."

4 Do you know who said that?

5 A. That was Officer Tagorda.

6 Q. Do you know who he was talking to?

7 A. I want to say it's the person raising their hand
8 near the -- my patrol car on the sidewalk.

9 Q. Okay. And do you know why they were raising
10 their hand?

11 A. I -- I don't.

12 MR. FINE: Calls for speculation.

13 BY MR. NISENBAUM:

14 Q. Okay. Did you ever talk with that person?

15 A. I'd have to see because I talked to one guy
16 briefly, but I don't know if that's him or not. I can't
17 tell.

18 Q. Okay. All right. Continuing at 40 seconds.

19 Pausing at 42 seconds.

20 Mr. Gutzalenko had been on his side in the
21 recovering position, and now he's prone.

22 And you saw him either roll or be pushed or both
23 into the prone position, right?

24 MR. FINE: Misstates the video.

25 THE WITNESS: I -- I would need you to back it up

1 because I was focusing on the person by the car, seeing
2 if it was the person I was speaking to.

3 BY MR. NISENBAUM:

4 Q. The beauty of this program is I can do it this
5 way. Moves quite slowly.

6 All right. I'll play it here at 37.

7 Okay. Pausing at 43 seconds.

8 Looks like he kind of rolled, and there was a
9 little tap in the roll direction by Officer Tran, right?

10 MR. FINE: Misstates the video.

11 THE WITNESS: It looked like he moved on his own
12 accord without Officer Tran. However, he's still there
13 and kind of just stayed with him.

14 BY MR. NISENBAUM:

15 Q. Okay. So now he's back prone, right?

16 MR. FINE: Misstates the video.

17 THE WITNESS: He's laying on his stomach with his
18 head up and his hands in front of him.

19 BY MR. NISENBAUM:

20 Q. Okay. And you have an understanding that that's
21 what prone means, you know, on your stomach?

22 MR. FINE: Vague and ambiguous.

23 THE WITNESS: I just call that laying on your
24 stomach.

25 ///

1 BY MR. NISENBAUM:

2 Q. Okay.

3 A. Prone to me is laying on your -- on your -- on
4 you chest, stomach, with your arms out by your side or
5 to -- or by your side. I -- I wouldn't call that a
6 prone position. I would call that just a laying down
7 position.

8 Q. Laying down on your stomach is what you would
9 call it?

10 A. Yes, the position he rolled himself to.

11 Q. Okay. And he's got a pretty big gut,
12 Mr. Gutzalenko does, right?

13 A. It's notable.

14 Q. Okay. And you've been trained with respect to
15 prone body restraint that whether a person has a big
16 belly is one of the things that puts them at risk of
17 asphyxiating, right?

18 MR. FINE: Calls for expert testimony. Calls for
19 speculation. Vague and ambiguous.

20 THE WITNESS: I would say no because I don't
21 recall receiving instructions about somebody's girth as,
22 you know --

23 BY MR. NISENBAUM:

24 Q. Okay.

25 A. -- have an issue that's -- I know people, bigger,

1 since I was there, you don't move as freely as, you
2 know, somebody who's in a little better shape or
3 thinner, but I don't recall receiving that instruction.

4 Q. Okay. So we're at 43 seconds.

5 Okay. We're pausing at 1:29.

6 You said he's having a reaction or something.
7 He's got dried vomit on his face, right?

8 A. Yes.

9 Q. Okay. And what were you noticing?

10 A. The dry, crusty vomit in his facial hair, and
11 like I said, he was spitting blood, and he had a bloody
12 right hand, and he had a bruise on his head.

13 Q. Okay. And then when you said he's having a
14 reaction to something, was it your belief that he was
15 under the influence of drugs?

16 A. Yes. That's why I was asking him what drugs he
17 took.

18 Q. Right.

19 And not only that, you saw that he had vomited,
20 and you thought he was having a bad reaction to whatever
21 he had taken, right?

22 A. Yes.

23 Q. Okay.

24 Pausing at 1:39.

25 I think that was your voice that said, "We're

1 going to put you in a recovery position so you can
2 breathe."

3 Is that -- are you saying that?

4 A. I believe so. I'd have to hear it again.

5 MR. FINE: Calls for speculation.

6 MR. NISENBAUM: I'll play it at 1:24.

7 BY MR. NISENBAUM:

8 Q. So that was Officer Tran. "The reason I'm going
9 to put you in a recovery position is so you could
10 breathe. Okay?"

11 Telling that directly to Mr. Gutzalenko, right?

12 A. It sounds like I -- it sounds like it could be
13 Officer Tran. Maybe my video or his video would be a
14 lot clearer on that statement because Officer Tagorda is
15 walking away.

16 MR. FINE: Calls for speculation.

17 BY MR. NISENBAUM:

18 Q. Okay. So we're at 1:37, I'll continue. I'm
19 paused at 1:40.

20 Someone said, "So if you throw up, you don't
21 choke."

22 Do you know who said that?

23 MR. FINE: I didn't hear that.

24 THE WITNESS: I didn't hear that either.

25 ///

1 BY MR. NISENBAUM:

2 Q. Okay. Well, listen a little more closely. My
3 volume is up as far as it can go, I believe. Yep.

4 "In case you throw up, you don't choke." You
5 heard that?

6 A. I heard that, yes.

7 Q. Okay. Was that you?

8 A. That sounded like me. That did sound like my
9 voice.

10 Q. Okay. All right. So you know people can
11 aspirate on their vomit and that's one of the reasons
12 you put them in the recovery position on their side,
13 right?

14 A. Yes.

15 Q. So vomit comes out?

16 A. Yes.

17 Q. Okay. Continuing at 1:30 -- oh, here we are.
18 You see the ambulance pulling up here. We're still
19 paused at 1:38.

20 You could see the paramedic or the ambulance
21 pulling up, correct?

22 A. Yes.

23 Q. Okay. All right. Pausing at 1:49.

24 Were you familiar with the paramedic who's
25 pictured here prior to this incident?

1 A. I mean, I -- I see a lot of paramedics. I mean,
2 it's not like a first-name basis, but I've seen him on
3 calls.

4 Q. That's why I'm asking. Maybe it is a first-name
5 basis. I don't know the answer.

6 A. Yeah. No, I don't know this person on a
7 first-name basis. I've just seen him on other calls and
8 car accidents, et cetera.

9 Q. All right. Now, once the paramedics arrived, is
10 there some rule that says that now everything that
11 happens is the paramedics' responsibility, not yours?

12 MR. FINE: Incomplete hypothetical. Vague and
13 ambiguous. Calls for speculation.

14 MR. KANTER: Join.

15 THE WITNESS: Well, we -- we're doing the 5150,
16 so we're -- at this point we can't even get the
17 paperwork done yet, so we -- once the paramedics
18 basically takes custody of him, then at that point, you
19 know, they -- they get briefed, and then, you know, they
20 do their evaluation. They try to talk, do their intake,
21 and then ultimately they end up -- they end up
22 controlling the scene, and once everything is said and
23 done we leave the scene.

24 BY MR. NISENBAUM:

25 Q. Okay. And I just -- we're still paused at 1:49.

1 I've just enhanced the -- expanded the -- or zoomed in,
2 I should say, the camera view. And I'm looking at the
3 side of the van, of the ambulance, and it says "Contra
4 Costa County Fire EMS," I think; is that right?

5 A. I --

6 MR. FINE: Calls for speculation.

7 THE WITNESS: Yeah, I don't know if it says "Fire
8 EMS," although I see Contra Costa County and the EMR
9 logo between the flags.

10 BY MR. NISENBAUM:

11 Q. Right. Okay.

12 Let me go back to regular view.

13 All right. I'm going to hit play again. We're
14 at 1:41.

15 I'm going to skip forward on our -- on Tagorda's
16 body cam. I'm going to skip forward to 3:25. I'm at
17 3:21, just pause it there. This is 18:48:03 on the Axon
18 body cam time tag.

19 Okay. I'm pausing it at 3:23.

20 You could see the paramedics have gotten the
21 stretcher out of the -- out of the ambulance, correct?

22 A. Yes.

23 Q. Okay. Can you tell me what happened? Why they
24 were getting the stretcher, if you know?

25 MR. FINE: Calls for speculation. Vague and

1 ambiguous. Overbroad.

2 MR. KANTER: Join.

3 THE WITNESS: I -- well, I'm sure with the
4 instruction about him spitting up blood, vomiting and
5 overall condition, that I didn't hear if Officer Tagorda
6 said he's going to 5150 him or not, or if we're doing
7 the 5150. But I'm assuming because of the described
8 medical issue that we're seeing, that's why they pulled
9 out the gurney.

10 BY MR. NISENBAUM:

11 Q. Okay. I don't want you to speculate.

12 My question is: Did you hear them talking about
13 why they were getting the gurney?

14 A. No.

15 Q. Okay. Continuing at 3:23.

16 I'm pausing at 4:07.

17 There was a voice saying, "I've done nothing
18 wrong." Did you hear that?

19 A. It was muffled from my end.

20 Q. Okay. I'll go back just a shade. Go back to
21 four -- 3:59.

22 Pausing it at 4:09.

23 You heard a voice saying -- and there's a
24 different body cam. I can play for that.

25 But in any event, other -- the prone restraint

1 was continuing during that time period, correct?

2 MR. FINE: Misstates the video.

3 THE WITNESS: The prone restraint, are you --
4 He's -- I mean, like him still on his stomach?

5 BY MR. NISENBAUM:

6 Q. Well, he was continuing to be forcibly
7 restrained, correct?

8 A. At this point, yes.

9 Q. Okay. Do you recall when the restraint -- well,
10 strike that.

11 I'll deal with that in a different video, but I'm
12 showing you this video for a reason.

13 Okay. I'm going to continue. We're at 4:09.

14 Obviously, we see you. You're now physically
15 involved in the restraint, and you probably have been
16 for a period of time before this, correct? Yourself --

17 A. I don't want -- I don't want to speculate, so I'd
18 rather see my footage -- my body cam, so --

19 Q. Body cam that shows you, shows what you did,
20 right?

21 A. But I'm being blocked by Officer Tran.

22 Q. It's okay. It's not a trick, I promise you.

23 There is clearly a physical restraint of
24 Mr. Gutzalenko that's happening in this video, correct?

25 A. Yes.

1 Q. Thank you.

2 And that restraint is being conducted at least by
3 Officer Tran at a minimum, correct?

4 A. Yes.

5 Q. Okay. We're at 4:09, continuing.

6 Okay. Let me scroll back. All right.

7 You could barely see it there.

8 But you could see that Officer Tran's left knee
9 was in the middle of Mr. Gutzalenko's back, right?

10 MR. FINE: Misstates the video.

11 BY MR. NISENBAUM:

12 Q. At 4:15. Did you see that?

13 MR. FINE: Same objection.

14 THE WITNESS: What I saw was Officer Tran using
15 his knee to control and limit his movement, but I didn't
16 see -- looks like all his weight is on his right knee
17 and he's using his left knee just to control movement.

18 BY MR. NISENBAUM:

19 Q. And where was his left knee positioned?

20 MR. FINE: Calls for speculation.

21 BY MR. NISENBAUM:

22 Q. In the video?

23 A. It looked like it was along -- well, I'd have to
24 see more. But I mean, from what I'm seeing right now, I
25 have a paramedic and Officer Tran in the far left corner

1 view of the body cam.

2 Q. Let me make sure we're going backwards and not
3 forward. That's forward. I think actually go back.
4 There's actually a much better shot of his knee later.
5 All right. I'll just go forward from 4:13.

6 By the way, there's a paramedic who's wrapping
7 his hand at this point in time, correct?
8 Mr. Gutzalenko's hand?

9 A. Yes, or trying to.

10 Q. Okay. And that's because it was bloody, right?

11 A. Yes.

12 Q. Okay. So we're continuing. We're at 4:13.

13 All right. We're paused at 4:33.

14 You heard Mr. Gutzalenko say, "No. Why are you
15 doing this to me," right?

16 A. Yes.

17 Q. Okay. Do you recall hearing that at the scene
18 when it happened?

19 A. Yes.

20 Q. Okay. And what's the answer?

21 A. I don't recall. I'd have to see. I'd have to
22 see the video more.

23 Q. My question is, why is this being done to him?

24 MR. FINE: Asked and answered.

25 ///

1 BY MR. NISENBAUM:

2 Q. Why is he being restrained in the manner that
3 he's being restrained?

4 A. Initially he's being detained for a crime, and
5 then we're determining if it's going to be a 5150.

6 Q. Okay. We're -- actually, let me go back about
7 three seconds. We're at 4:28. You're going to hear the
8 words "5-1-5-0" or just the numbers 5150. I think I
9 know who says them, but you tell me.

10 Do you know whose voice that was that said
11 "5-1-5-0"?

12 MR. FINE: Calls for speculation.

13 BY MR. NISENBAUM:

14 Q. Go ahead.

15 A. Sounds like my voice.

16 Q. Okay. And do you recall saying that?

17 A. I know I said that because I told him we're going
18 to paper him.

19 Q. Okay. By saying "5-1-5-0" instead of 5150, were
20 you saying that so that he wouldn't necessarily hear the
21 term "5150"?

22 A. Yes.

23 Q. Okay. And why? Why did you say it the way you
24 said it, 5-1-5-0?

25 A. I didn't want to agitate him anymore than he

1 already was.

2 Q. All right. And I'm going to hit play. We're at
3 4:33.

4 And you can tell the position that Officer Tran
5 is in -- you can't see the knee right here, but you can
6 tell the general position, right?

7 MR. FINE: Calls for speculation. Misstates the
8 video.

9 BY MR. NISENBAUM:

10 Q. Correct?

11 A. I can see him on Mr. Gutzalenko's side, but the
12 way I have his arm up his chest is elevated so he has
13 airway.

14 Q. His chest is elevated. You think so? Okay.

15 What about his diaphragm? Is his diaphragm
16 elevated?

17 MR. FINE: Calls for speculation. Calls for
18 expert opinion.

19 BY MR. NISENBAUM:

20 Q. Okay. Well, let me ask you -- it's just as a
21 matter of physics.

22 When you have, let's say, a cement ground on the
23 bottom and you have pressure on the top, there's not
24 much give in the cement ground, right?

25 MR. FINE: Incomplete hypothetical. Assumes

1 facts. Vague and ambiguous.

2 BY MR. NISENBAUM:

3 Q. Do you agree with that?

4 MR. FINE: Same objections.

5 THE WITNESS: I have his arm up, and I can't see
6 what pressure's on his back because he's still kind of
7 slamming on the side right there.

8 BY MR. NISENBAUM:

9 Q. I asked you a different question.

10 A. Well, he's not flat on the ground, so I don't
11 know what pressure you're talking about on his back
12 right now.

13 Q. Well, my question is: When you have a person on
14 a cement ground and the ground is cement, and if you
15 apply vertical pressure, downward pressure on their
16 torso, then you would agree that that causes compression
17 of the torso, correct?

18 MR. FINE: Incomplete. Hypothetical. Calls for
19 expert opinion. Misstates the video. Assumes facts.

20 BY MR. NISENBAUM:

21 Q. A matter of common sense and basic competence.

22 MR. FINE: Same objections.

23 THE WITNESS: I mean, sure. I guess there will
24 be compression.

25 ///

1 BY MR. NISENBAUM:

2 Q. Okay. We're at 4:36.

3 Okay. Let's go back just a shade here.

4 All right. So we're at 4:40, and the time stamp
5 is 18:49:24 on the Axon time stamp.

6 And now you can see that Officer Tran's knee and,
7 I guess, upper part of his shin is pressed against
8 Mr. Gutzalenko's back, correct?

9 MR. FINE: Vague and ambiguous.

10 THE WITNESS: In my opinion, it looks like he
11 uses a control device because I see all the weight on
12 his right knee on the hard cement.

13 BY MR. NISENBAUM:

14 Q. When you say "all the weight," what do you mean?

15 A. Looks like Officer Tran is putting the weight on
16 his right knee which is resting against the cement
17 ground and that he's using his knee as a control to
18 control the movement of Gutzalenko.

19 Q. I see. So if that right knee were to come up off
20 the ground and the left knee were to press towards the
21 ground while in the middle of Mr. Gutzalenko's back,
22 then that would be -- that would be what would be
23 forbidden or not acceptable as reasonable police conduct
24 in this circumstance; is that right?

25 MR. FINE: Incomplete hypothetical. Calls for

1 speculation. Overbroad.

2 BY MR. NISENBAUM:

3 Q. Based on your training?

4 MR. FINE: Same objections.

5 BY MR. NISENBAUM:

6 Q. And understanding of Richmond Police Department
7 policy.

8 MR. FINE: Same objections.

9 THE WITNESS: I mean, if he -- if he applied
10 pressure on his, you know -- take the pressure on his
11 right knee, put all the pressure on the left knee, then
12 you know -- that would, you know. He would provide a
13 compression at that moment, but I'm not seeing
14 compression at this time.

15 BY MR. NISENBAUM:

16 Q. That would be bad if he did that, right? That
17 would be bad, meaning it would be compressive of the
18 torso, which is something you want to avoid because it
19 impairs breathing, correct?

20 MR. FINE: Same objections. Misstates the video.

21 THE WITNESS: It -- the compression, the thing
22 is -- what word am I looking for? The -- compressing
23 the airway is, you know -- and right now --

24 (Reporter clarification.)

25 THE WITNESS: You know, you don't want to

1 compress the airway. You don't want to restrict
2 somebody's airflow, but currently in this position, I'm
3 not seeing the restriction of airflow because it looked
4 like Mr. Gutzalenko is still leaning against
5 Officer Tran's knee, which he's using in controlling
6 moving and support.

7 MR. NISENBAUM: That wasn't my question, though.

8 THE WITNESS: All right. Ask your question
9 again.

10 Q. I'll have it read back.

11 (Record read.)

12 MR. NISENBAUM: Yeah, that was the last question.

13 BY MR. NISENBAUM:

14 Q. What I said was, if you were to start pressing
15 down, putting his weight on the left side, on his left
16 side, on his left knee, right? Picking his right knee
17 up off the ground and putting his weight with his left
18 knee down in the middle of Mr. Gutzalenko's back, that
19 would be what is not permitted by Richmond Police
20 Department policy under these circumstances, correct?
21 Because that would, based on your training, would
22 interfere with the diaphragm and the airway, correct?

23 MR. FINE: Same objections.

24 THE WITNESS: I'll go by policy saying that it
25 should not restrict a person's airway. You should not

1 restrict a person's airway, but I'm still not seeing a
2 restriction right now. So maybe you got another angle
3 will show me differently.

4 BY MR. NISENBAUM:

5 Q. Well, I'm going to 4:40. Obviously, you're not
6 the judge here but -- or the fact finder, but the
7 question is about policy. So I'm going to continue at
8 4:40.

9 Okay. We're now at 4:51, and you can see that
10 the knee is pressed in the middle of the back, slightly
11 different angle, but all the way across the middle of
12 the back pretty much, correct?

13 MR. FINE: Misstates the video.

14 THE WITNESS: It looks like it's on the lower
15 back and he's still using it as a control movement
16 because he's not flat-proned and he's still moving
17 around somewhat freely except I have control of his left
18 arm.

19 BY MR. NISENBAUM:

20 Q. Okay. Continuing at 4:51.

21 All right. We're at 5:05.

22 Mr. Gutzalenko responded to you when you said,
23 "You're going to get tased then," right?

24 A. Yes.

25 Q. And he responded in a manner that would suggest

1 that he recognized what you said, correct?

2 A. Yes.

3 Q. He said, "No, please don't do it." Right?

4 A. Yes.

5 Q. Okay. Was he sweating profusely by any chance?

6 A. I don't recall.

7 Q. Nothing that you can recall where it felt like he
8 was drenched in sweat, correct?

9 A. I -- I can't -- I don't recall.

10 Q. Okay. We're continuing at 5:05.

11 Go back just a shade. Okay. We're now at 5:11,
12 and from what you can see here, you can see that the
13 shin, the whole -- from the knee to the top half of the
14 shin of Officer Tran is pressed against the area of
15 Mr. Gutzalenko's back, that is above the hip and above
16 the pelvis, correct?

17 MR. FINE: Misstates the video. Calls for expert
18 opinion. Calls for speculation.

19 BY MR. NISENBAUM:

20 A. So if you -- it was his -- it looked like it's on
21 his left side, not his back, because you can see the
22 rear pocket of his jeans are vertical to the ground and
23 he's not on his stomach. He's literally on his side
24 right there, and that's the lower back area near the
25 left side.

1 Q. Regardless, it's compression, correct? It's
2 compression against the ground, right?

3 MR. FINE: Calls for speculation. Calls for
4 expert opinion. Vague and ambiguous.

5 BY MR. NISENBAUM:

6 A. Yeah, I -- from what I see it still looks like
7 he's controlling movement and I still see the pressure
8 on his right knee that's on hard cement.

9 Q. We'll continue. We're at 5:11.

10 Pausing at 5:32. Let me go back earlier. You
11 had Mr. Gutzalenko saying, "I can't breathe" just based
12 on your memory, correct?

13 A. Yes.

14 Q. Okay. So you understood that he was having some
15 sort of respiratory issue, at least he was expressing
16 that when you first encountered him, correct?

17 MR. FINE: Calls for speculation.

18 THE WITNESS: You know, I -- I can't assume that
19 he had respiratory issues because every, you know --
20 seems like everybody says "I can't breathe anymore," but
21 you have to assume that they, you know, cannot. But I'm
22 not a medical expert to say he could or not.

23 BY MR. NISENBAUM:

24 Q. Which is -- I mean, based on what you observed,
25 he was expressing that he was having breathing

1 difficulty when you first encountered him, correct?

2 A. If I recall, I -- I don't recall. I recall it
3 more during the detention process.

4 Q. Okay. But while he was being restrained, he was
5 saying that he was having difficulty breathing, correct?

6 A. Yes.

7 Q. Okay. And what was done in order to accommodate
8 that?

9 MR. FINE: Overbroad. Vague and ambiguous.

10 THE WITNESS: We -- we were trying to get him to
11 comply and get him back into his recovery position.

12 BY MR. NISENBAUM:

13 Q. When you say "get him back into recovery,"
14 while -- I -- again, the concept of the ground pressure
15 here, you know, unless you're on a trampoline or
16 something like a very soft bed, if you have hard ground
17 pressure here, it doesn't matter if you're on your back,
18 on your side, on your stomach, there's compression,
19 correct?

20 MR. FINE: Misstates the video. Calls for
21 speculation. Calls for expert opinion. Asked and
22 answered.

23 BY MR. NISENBAUM:

24 Q. You understand that as a matter of common sense,
25 right?

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 MR. FINE: Same objections.

2 THE WITNESS: Yes.

3 BY MR. NISENBAUM:

4 Q. Thank you.

5 All right. Continuing at 5:32.

6 All right. Pausing at 5:40.

7 You heard one of the paramedics say, "I'm going
8 to get some Versed drawn up," and I think you said,
9 "We're going to Versed him as opposed to sedate him."
10 But maybe you said "sedate," I don't know. Do you
11 recall?

12 A. Can we go back so I can --

13 Q. It sounded like he was using Versed as a verb.
14 5:24, continuing -- I'm sorry 5:28, continues.

15 Pausing at 5:39.

16 Do you recall if -- does that jog your memory at
17 all?

18 A. Yeah. I heard him say he's going to get some
19 Versed drawn up. But I thought I heard him say he was
20 going to sedate him.

21 Q. Okay. I'm not certain. I'll ask him when I
22 depose him, of course.

23 All right. Let me skip forward to six minutes.
24 We're at 5:57. Hit play.

25 All right. Pausing it at six minutes. That's

1 still Officer Tran with one foot, one knee on the
2 ground, the other knee against him, and you saw the knee
3 move forward. That's pressure, correct? The left knee
4 that was on him, pushing his body forward, you saw that
5 happen?

6 A. Can you go back again so I can see that happen?

7 Q. I'll do it in slow motion. So we're at
8 six minutes here on the timer. And we're at 18:50:44 on
9 the Axon video stamp. I'll just scroll forward.

10 So you saw that the pressure moved in a forward
11 manner into his body, into Mr. Gutzalenko's body,
12 correct?

13 MR. FINE: Calls for speculation. Misstates the
14 video.

15 THE WITNESS: It -- it shows on the lower back
16 that it moved on the lower back.

17 BY MR. NISENBAUM:

18 Q. Yeah. Where it had been the whole time, right?
19 In the same location that it had been the whole time,
20 right?

21 MR. FINE: Calls for speculation.

22 BY MR. NISENBAUM:

23 Q. Above his hips and pelvis, correct?

24 MR. FINE: Same objections.

25 THE WITNESS: Yes, above his hips.

1 BY MR. NISENBAUM:

2 Q. Okay. I'm going to hit play.

3 Backwards just a shade. All right. Now we're at
4 6:09, and you can see Officer Tran's knee moved from
5 this position into the center of his back and then
6 pressed, correct?

7 MR. FINE: Calls for speculation. Misstates the
8 video.

9 BY MR. NISENBAUM:

10 Q. He actually moves off him. All right. I'll
11 withdraw the question.

12 6:11, there we go. Slow mo. I'm going to do it
13 this way. I'm reversing. Okay. So now we are at 6:15.
14 And you can see that Officer Tran's knee has moved up
15 towards the center, his -- I should say, his lower leg.
16 Officer Tran's lower leg has moved up towards the center
17 of Mr. Gutzalenko's back. He no longer has his knee,
18 his right knee on the ground. Instead he's using his
19 foot to -- his right foot to leverage his way forward on
20 to Mr. Gutzalenko's back with the -- his lower left leg,
21 correct?

22 MR. FINE: Misstates the video. Calls for
23 speculation.

24 THE WITNESS: I would like to see the entire
25 video before I give a statement.

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 BY MR. NISENBAUM:

2 Q. Well, we're not -- I'm not watching the entire
3 video with you. If you want to see a segment, I mean --

4 A. I want to see the segment what you're referring
5 to. You wanted me to answer about, you know, his -- his
6 movement.

7 Q. We're here at 6:13. I'll hit play.

8 Now we're at 6:23.

9 The knee is dead in the center of his back,
10 right?

11 MR. FINE: Misstates the video.

12 BY MR. NISENBAUM:

13 Q. Falls between the shoulder blades, right?

14 MR. FINE: Same objection.

15 THE WITNESS: So it's up there, but it looks like
16 it's more towards the shoulder. And it still looks like
17 he's using his control technique. I don't see like --

18 BY MR. NISENBAUM:

19 Q. The --

20 A. He's on his toe, but he's not like -- Gutzaenko
21 is still able to move around, so that indicates that
22 there's not pressure. It's still being used as just
23 control, trying to control movement.

24 Q. Well, his other knee is off the ground.

25 Officer Tran's right knee is off the ground now,

1 right?

2 MR. FINE: Objection. You can't see that in this
3 particular frame.

4 BY MR. NISENBAUM:

5 Q. Not in the frame, but you saw it before.

6 So you know that it's true, and there it is. I
7 mean, 6:36. That's the knee in the back, that's
8 everything you said it wasn't before, correct?

9 MR. FINE: Misstates testimony. Vague and
10 ambiguous. Argumentative. Misstates the video.

11 BY MR. NISENBAUM:

12 Q. Okay. Previously, you said earlier in the video
13 that you didn't believe that there was weight being
14 pressed on Mr. Gutzalenko's back in a significant way.
15 It was more like a control thing because his right knee,
16 Officer Tran's right knee, was on the ground and that he
17 was simply using the -- and there didn't appear to be a
18 lot of weight being put into the left knee that was at
19 his lower back. But now we've seen the left knee has
20 moved up to the middle of the back basically. And you
21 can tell that he straightens his right leg in a classic
22 attempt to gain leverage. That's a term I'm sure you're
23 familiar with it. And he's pressing down with his left
24 knee. You can see, you can even look at the toe there,
25 at the left toe.

1 That's what happens when you're pressing,
2 correct?

3 MR. FINE: Misstates the evidence, the video.
4 Misstates prior testimony. And calls for speculation.

5 THE WITNESS: And that still looks like the
6 shoulder area to me on his --

7 BY MR. NISENBAUM:

8 Q. This is the shoulder area?

9 A. You get --

10 Q. Let me zoom in on that.

11 A. Well, this is somebody's feet. Look. This is
12 recording from the feet. So if there's a -- the angle
13 is not the best angle to testify on --

14 Q. Oh, I've got other angles.

15 A. Okay.

16 Q. In any event, you agree, though, that he's doing
17 everything that you said he wasn't doing before with
18 respect to putting his weight, having most of his weight
19 on his right leg, that's no longer true, correct?

20 MR. FINE: Calls for speculation. Misstates the
21 video.

22 THE WITNESS: I do not see the weight on his
23 right leg anymore, no.

24 BY MR. NISENBAUM:

25 Q. Okay. And he appears to be using his leverage,

1 his momentum, and his application of force is directed
2 through his left knee, correct?

3 MR. FINE: Calls for speculation. Calls for
4 expert opinion. Misstates the video.

5 THE WITNESS: Looks like he's using his right
6 knee -- I'm sorry, his left knee to control the movement
7 of Gutzalenko.

8 BY MR. NISENBAUM:

9 Q. Fine.

10 He's pinning him down against the ground with his
11 left knee.

12 That's what he's doing, right?

13 MR. FINE: Misstates the video.

14 THE WITNESS: I still feel like he's controlling
15 movement, and I don't feel like he's applying his full
16 weight on that shoulder area.

17 BY MR. NISENBAUM:

18 Q. You feel like, but you can see that all the
19 reasons you gave before, that's not what's happening
20 here, right?

21 MR. FINE: Same objections. Overbroad.
22 Misstates testimony.

23 THE WITNESS: And I don't -- as far as -- he
24 still is moving around. So I mean if Tran had his full
25 weight on there, Gutzalenko would not be able to move so

1 freely.

2 BY MR. NISENBAUM:

3 Q. So he has to be dead before he can die from being
4 asphyxiated?

5 MR. FINE: Misstates testimony. Argumentative.
6 Calls for expert opinion.

7 BY MR. NISENBAUM:

8 Q. I'll strike that. I'll strike that.

9 You understand that when people's breathing is
10 interfered with, there is an involuntary, just natural
11 instinct to do whatever you can to breathe. And that's
12 true, no matter what, unless you are comatose.

13 And you understand that as a matter of life,
14 right?

15 A. Yes.

16 MR. FINE: Calls for speculation.

17 BY MR. NISENBAUM:

18 Q. If you interfere with a person's breathing, well,
19 they react against it. They're not resisting
20 necessarily; they're trying to breathe.

21 MR. FINE: Overbroad.

22 BY MR. NISENBAUM:

23 Q. Are you trained in that?

24 MR. FINE: Overbroad. Vague and ambiguous.

25 THE WITNESS: I'm not -- I'm not trained to

1 speculate when someone can or can't breathe.

2 BY MR. NISENBAUM:

3 Q. But you are trained to not do what Officer Tran
4 is doing in this shot that we have here, which is at
5 06:36 on the timer and at 18:51:20 on the Axon time
6 stamp.

7 That's what you're not supposed to do, correct?

8 MR. FINE: Misstates the video. Misstates prior
9 testimony.

10 THE WITNESS: And I can't give expert testimony
11 on that because we're on the still shot and --

12 BY MR. NISENBAUM:

13 Q. I don't think you can give expert testimony,
14 period.

15 I'm asking you about your training based on your
16 understanding of training and policy.

17 A. You can --

18 MR. FINE: Same objections.

19 THE WITNESS: And you can put it on somebody's
20 shoulder blade. You can put it on their glute. And
21 this looks like it's still controlling movement and is
22 not trying to be malicious or in violation of the
23 policy.

24 BY MR. NISENBAUM:

25 Q. Well, again, it's not on his glute. And it's

1 sure not on his shoulder blade.

2 That's the middle of the back.

3 MR. FINE: Misstates the video.

4 THE WITNESS: Again, we'll see the -- we'll see
5 the different angle then because I'm -- I'm not going to
6 say it's the middle of the back from this angle.

7 MR. NISENBAUM: With respect to Counsel's
8 objections, there's a case called Scott v. Harris, says
9 when the video is clear, you can't fight the video.

10 MR. FINE: I don't believe it's clear, Counsel.

11 MR. NISENBAUM: I think it is.

12 MR. FINE: I understand that. We disagree.

13 MR. NISENBAUM: All right.

14 BY MR. NISENBAUM:

15 Q. So in any event, let me ask you this: Actually,
16 I've already asked you. I'll hit play. We're at 6:36.

17 All right. Up to this point, at any time -- I'm
18 going to play yet -- had Mr. Gutzalenko been handcuffed
19 yet?

20 A. Not yet, no. I was still controlling his left
21 hand.

22 Q. Okay. I'm going to hit play. We're at 6:36.

23 We're at 6:41. Mr. Gutzalenko just said, "I
24 can't breathe" twice, correct?

25 A. Yes.

1 Q. And you can see where Officer Tran's knee is on
2 Mr. Gutzalenko's back, correct? I know they're both
3 wearing black, but it's pretty clearly dead in the
4 center of Mr. Gutzalenko's back, correct?

5 MR. FINE: Vague and ambiguous. Misstates the
6 video.

7 THE WITNESS: Again, I'd like to see a different
8 angle because this is the same angle we've been talking
9 about, Counsel.

10 BY MR. NISENBAUM:

11 Q. Okay. So you can't tell.

12 Your eyes, they don't tell you where his -- where
13 Officer Tran's knee is on Mr. Gutzalenko's back there;
14 is that right?

15 MR. FINE: Asked and answered. And
16 argumentative.

17 THE WITNESS: I think my camera will show a --
18 show better for more of a statement.

19 BY MR. NISENBAUM:

20 Q. Again, can you tell?

21 A. It still looks like it's on his upper extremity
22 area to control that. It doesn't look -- it looks like
23 it's against the back to control Gutzalenko's movement.

24 Q. And the right knee is off the ground, correct?

25 A. Yes.

1 Q. All right. Continuing at 6:41.

2 And we heard Mr. Gutzalenko say, "I can't
3 breathe. Please. I can't breathe." I paused at 6:48.
4 Correct?

5 A. Yes.

6 Q. Okay. And that's 18:51:32 on the Axon time stamp
7 that it's paused at.

8 And again, the knee remains -- Officer Tran's
9 knee remains in the same positioning, correct? The left
10 knee.

11 A. And his right knee is going back to the ground.

12 Q. Sure.

13 Now, we're at 6:48.

14 Officer Tran has removed his knee. I just paused
15 it. We're at 6:50.

16 So he's removed his knee, and now, there's a
17 handcuff on the left hand, correct?

18 A. Yes.

19 Q. All right. Continuing at 6:50.

20 Okay. Someone saying, "Ivan, stop and get the
21 Taser."

22 That's you, I assume?

23 A. Yes.

24 Q. And you were still bluffing him?

25 A. Yes. You can't Taser a handcuffed individual.

1 Q. All right. So you are telling this person in
2 these straits, basically threatening a use of force to
3 gain compliance, correct?

4 A. No. You can use a ruse, which is part of
5 de-escalation to get them to comply.

6 Q. Okay. When I say "threatening a use of force,"
7 you were threatening him with a possible use of force,
8 although you weren't intending to use that force,
9 correct?

10 A. I was doing de-escalation techniques, trying to
11 get him to comply.

12 Q. Well, you call it a ruse, but the reality is
13 what -- you were using a verbal threat to him in order
14 to gain compliance, a threat of force, even though you
15 had no intention of following through on the threat of
16 force, correct?

17 A. Yes.

18 Q. Okay. Continuing at 7:09.

19 Okay. Pausing at 3:19.

20 You're essentially, you're trying to complete the
21 handcuffing now, correct?

22 A. Yes. We're trying to -- Officer Tran is trying
23 to get his right hand into the handcuff.

24 Q. Okay. All right. And was Mr. Gutzalenko, was he
25 still resisting you at this time?

1 A. Yes.

2 Q. Okay. Continuing at 7:19.

3 All right. Let me ask you this -- I'm paused at
4 7:23.

5 Was anyone controlling his legs at this time?

6 A. I believe Officer Tagorda still was, but I
7 can't -- I -- I don't know if -- I can't recall.

8 Q. I'll ask him. But it seems difficult for --
9 unless he has the longest arms in the world to have his
10 arms -- his hands on his legs at that time, just based
11 on the body cam. But I'll ask him when I get a chance.

12 All right. Continuing at 7:23.

13 Okay. Now, we're at 7:31. He's telling him,
14 "Don't kick." And who was that?

15 A. That would be Officer Tagorda.

16 Q. Okay. All right. And now we see that this
17 paramedic with the glasses is walking up.

18 He's got a syringe in his hand, correct?

19 A. Yes.

20 Q. And who's this guy here, where my cursor is?

21 A. Officer Tran.

22 Q. Okay. We're at 7:37. This is time stamp
23 18:52:21.

24 Okay. Now, Mr. Gutzalenko, he's currently in
25 custody of the police, correct?

1 A. Yes.

2 Q. Okay. And --

3 MR. FINE: Belatedly. Calls for a legal
4 conclusion, expert testimony.

5 BY MR. NISENBAUM:

6 Q. And there is an injection that is about to be
7 given. We're at 7:40.

8 All right. Whose hand pulled the sweatshirt or
9 the shirt?

10 A. It looks like both the paramedic and
11 Officer Tran's holding -- holding it.

12 Q. Right.

13 Exposing the skin for the injection, correct?

14 A. Yes.

15 Q. "Never mind. You got that. That's the good
16 stuff."

17 That was maybe Officer Tagorda or -- who was
18 that? Was that you?

19 A. That was not me, no.

20 Q. Okay. So that's 7:48. I don't know if it was --
21 I don't know who it was, but you got that. It's the
22 good stuff.

23 Officer Tran is still hands on him at this time,
24 correct?

25 A. Yes.

1 Q. The injection's been given. We're at 18:52:32.
2 And someone said something about unconscious,
3 7:51.

4 I don't know who that was, do you?

5 MR. FINE: Calls for speculation.

6 BY MR. NISENBAUM:

7 Q. What was the answer?

8 A. I -- I did -- I didn't -- I don't record- -- I'd
9 have to hear the voice again, but I can't.

10 Q. I couldn't tell. I mean, I've listened to it
11 several times. I couldn't tell. But I'm going back to
12 7:43.

13 A. That's -- that -- that sounds like me saying,
14 "He's acting unconscious."

15 Q. "He's acting unconscious," is what you said?

16 A. What I think I said, yeah. But I definitely --
17 unconscious was in that statement.

18 Q. I know that. I heard the unconscious part. I
19 was trying to figure out what exactly was said, but that
20 was 7:51 and 18:52:35 on the time stamp.

21 So it appeared to you that he was unconscious
22 immediately after the shot was given?

23 A. Yeah, because he was still breathing before the
24 injection was given.

25 Q. Okay. Well, and I breathe when I'm conscious

1 too.

2 A. He was breathing before the injection was given.

3 Q. I got that.

4 So you were saying -- what did you actually say?
5 "Acting unconscious," like faking unconsciousness?

6 A. Yeah. I believe -- I believe I said he was
7 acting unconscious.

8 Q. And what did that mean?

9 A. That it's common for people to act as if they're
10 not conscious or not awake during the process.

11 Q. Why would that be good?

12 A. I didn't say good.

13 Q. You said, "So that's a good thing." I mean, let
14 me go back here. I'll play it 7:46. One second.
15 Trying to play it. Sorry, 7:44.

16 You said, "So that's good." Right now, he's
17 acting like he's unconscious, so that's good?

18 A. I -- I don't know why I would say it was good.
19 But maybe to be easier for him to get onto the gurney
20 or, you know, because sometimes when people act
21 unconscious, they act more compliant. And you get them
22 on the gurney and get them out of the area.

23 Q. And so that's good?

24 Right now, what I actually heard, listening very
25 closely was, I heard you say, I believe, "Ahh, we're

1 doing great. He's unconscious, so we're good." That's
2 what I actually recall hearing you say. Listen to it
3 very closely, and I just want to confirm that that's the
4 case. So if you could listen one more time. We're at
5 7:45.

6 And I could be wrong, could be "So that's good?"

7 But it was, "Ahh, we're doing great. He's
8 unconscious, so that's good"?

9 A. I --

10 MR. FINE: Calls for speculation. It might
11 misstate the video. It's hard to tell.

12 THE WITNESS: Yeah, I -- I don't hear "we're
13 doing good," but --

14 BY MR. NISENBAUM:

15 Q. "So we're good," that's at the end or "so that's
16 good," one or the other, right?

17 MR. FINE: Same objections.

18 BY MR. NISENBAUM:

19 Q. At the very beginning of that was, "Ahh, we're
20 doing great," correct?

21 MR. FINE: Same objections.

22 THE WITNESS: I can't -- I mean, I'll listen to
23 it again, but I don't hear --

24 BY MR. NISENBAUM:

25 Q. I'll play it again. We're at 7:42.

1 It sounded like "Ahh, we're doing great. He's
2 unconscious, so that's good."

3 A. Is that a --

4 MR. FINE: Is that a question?

5 BY MR. NISENBAUM:

6 Q. Do you agree that that's --

7 MR. FINE: Same objections.

8 THE WITNESS: Yeah, I -- I can't agree to that
9 because it doesn't sound that -- that is not clear to me
10 the way it seems to be clear to you.

11 BY MR. NISENBAUM:

12 Q. Okay. Well, I have listened to it closely.

13 But in any event, do you have a recollection as
14 you sit here now especially having listened to this to
15 refresh your recollection of what you actually said
16 there?

17 A. It sounds like, "He's acting unconscious, so
18 that's good" is what I believe I said.

19 Q. Okay. So a person who's acting unconscious could
20 immediately start acting conscious, right?

21 A. Yes.

22 MR. FINE: Incomplete hypothetical.

23 BY MR. NISENBAUM:

24 Q. Whereas if they're unconscious, then -- if
25 they're actually unconscious, there would be some

1 transition time to acting conscious, right?

2 MR. FINE: Calls for speculation. Calls for
3 expert opinion.

4 THE WITNESS: Any -- anyone can play possum at
5 any time.

6 BY MR. NISENBAUM:

7 Q. Okay. So you thought he was playing possum?

8 A. It -- it's happened before, so yes.

9 Q. Okay. So the answer is, you believe that
10 Mr. Gutzalenko was playing possum at this time, we're at
11 7:51; is that correct?

12 A. I believe he was acting unconscious. And it's a
13 common activity I've seen multiple times.

14 Q. Again, you thought he was faking unconsciousness,
15 correct?

16 MR. FINE: Asked and answered many times.

17 THE WITNESS: And my answer is still the same,
18 yes. I felt he was faking being unconscious.

19 BY MR. NISENBAUM:

20 Q. Thank you.

21 So continuing at 7:51.

22 Let me ask you this: It was obvious that
23 Mr. Gutzalenko had coded, I think the term is, that,
24 basically, he had no pulse, no heartbeat, and was not
25 breathing minutes before he was put into the ambulance,

1 correct.

2 MR. FINE: Calls for speculation.

3 MR. KANTER: Lacks foundation.

4 I'm sorry. Go ahead.

5 MR. FINE: No, you go ahead, Scott. My
6 apologies.

7 MR. KANTER: Objection. Lacks foundation. Calls
8 for speculation. Calls for an expert opinion.

9 MR. FINE: Join.

10 BY MR. NISENBAUM:

11 Q. Based on your recollection?

12 A. When we saw him on the gurney is whenever I
13 became aware he was not breathing, not until he was
14 placed on that gurney.

15 Q. It was before he was in the ambulance, though,
16 correct?

17 A. Yes.

18 Q. And it was not seconds before, but at least a
19 minute or two before, correct?

20 MR. FINE: Calls for speculation.

21 MR. KANTER: Join. Lacks foundation. Calls for
22 expert opinion. I think the question is vague and
23 ambiguous the way you're asking it as well when we say
24 "it."

25 MR. FINE: Join.

1 BY MR. NISENBAUM:

2 Q. It did not seem -- meaning that he had lost a
3 heartbeat and wasn't breathing?

4 MR. KANTER: Same objections. It totally calls
5 for speculation. Lacks foundation. He even had to
6 check for a pulse.

7 MR. FINE: Join.

8 THE WITNESS: I can't speculate how long he was
9 before he went to the ambulance.

10 BY MR. NISENBAUM:

11 Q. Well, who does CPR on someone who's breathing and
12 has a heartbeat?

13 A. And once he was on the gurney, that's when it
14 started.

15 Q. I know. And that was before he was put in the
16 ambulance, right?

17 MR. FINE: Asked and answered.

18 BY MR. NISENBAUM:

19 Q. Well, it's all on here. So I'll just play, 7:55.

20 Okay. Pausing it at 7:58.

21 You saw Officer Tran reach over, patting the
22 front of Mr. Gutzalenko.

23 Do you know what he was doing there?

24 A. Probably checking for anything concealed in his
25 front waistband or groin area.

1 Q. Well, he didn't reach for the groin area. He was
2 patting his chest.

3 A. Well, people will stick stuff right below the
4 belt line into the top of their groin.

5 Q. But he didn't reach for the groin. Watch again.
6 7:54.

7 I mean, it seemed like he was just patting the
8 front of his torso.

9 MR. FINE: Calls for speculation based on what
10 you can see in the video.

11 BY MR. NISENBAUM:

12 Q. Pause at eight minutes.

13 Do you know what he was doing there?

14 MR. FINE: Same objection. Calls for
15 speculation.

16 BY MR. NISENBAUM:

17 Q. If you don't know, then just say so.

18 A. I'm assuming he was searching for any concealed
19 contraband or anything.

20 Q. Okay. Continuing at eight minutes.

21 I'm going to pause it at 8:17. Let me ask you
22 another question.

23 What is the last volitional movement that you
24 recall Mr. Gutzalenko making?

25 MR. FINE: Vague and ambiguous. Calls for

1 speculation. Calls for expert opinion.

2 MR. KANTER: Join.

3 THE WITNESS: What -- what was the word you used
4 or -- the last?

5 BY MR. NISENBAUM:

6 Q. The last volitional, meaning like intentional or
7 voluntarily, a movement that he initiated himself.

8 MR. FINE: Same objections.

9 MR. KANTER: Join.

10 THE WITNESS: Well, the human body involuntarily
11 moves by breathing, so it would be his breathing action
12 after he was handcuffed on the ground.

13 BY MR. NISENBAUM:

14 Q. Okay. Well, I guess, when was that?

15 A. Prior to the injection.

16 Q. Okay. So prior to the -- by the way, what were
17 the last words that you recall him saying?

18 A. I don't know. We have -- we can -- we can play
19 it back, if you would like, so I can tell you for sure.

20 Q. Is it fair to say that your best -- the last
21 words that you actually recall him saying were, "I can't
22 breathe"?

23 MR. FINE: Calls for speculation.

24 THE WITNESS: I mean, we can replay -- we can
25 replay it back. And that way, I can give you --

1 BY MR. NISENBAUM:

2 Q. I'm asking you your recollection. I don't -- I
3 know what's on the tape. I'm asking you your
4 recollection.

5 A. Well, you've got time to review the tape more
6 than I did, Counsel. So if you want to play it back, I
7 can give you a definitive answer.

8 Q. I'm asking for your best recollection.

9 MR. FINE: And if you know.

10 BY MR. NISENBAUM:

11 Q. If you don't have one, then say so.

12 A. No.

13 Q. Just say so.

14 A. I will -- I will give my recollection. I don't
15 remember what his last words were.

16 Q. Okay. All right. I'm going to continue at 8:17.

17 MR. FINE: Ben, if you get a chance for a
18 restroom break at a good stopping point, I would
19 appreciate it. But obviously, I won't go until you're
20 comfortable.

21 MR. NISENBAUM: Well, I mean, I'm actually pretty
22 close to done.

23 MR. FINE: Okay. Fair enough. Sorry.

24 MR. NISENBAUM: And I've got -- if he -- we could
25 go like ten more minutes, probably.

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 MR. FINE: Sure. Yeah.

2 BY MR. NISENBAUM:

3 Q. Okay. Cool. 8:17. I'm going to hit play.

4 Okay. Pausing it at 8:22.

5 The police are assisting, in putting
6 Mr. Gutzalenko on the stretcher, correct?

7 A. Yes.

8 Q. Okay. And moving back, let me go to 8:08, 8:04
9 is where we'll go.

10 All right. Someone is saying, "If you can, just
11 get him up on the gurney, sit him up."

12 Was that the paramedic with the -- who did the
13 injection who said that?

14 MR. FINE: Calls for speculation.

15 BY MR. NISENBAUM:

16 Q. This guy up here?

17 MR. FINE: Same objection.

18 THE WITNESS: Well, it wasn't Officer Tran's
19 voice, mine or Officer Tagorda's, so I don't want to
20 assume it was him. But I also can't see any facial
21 movement with the mask on.

22 BY MR. NISENBAUM:

23 Q. I understand, but that would be fairly typical
24 for the paramedics to kind of give you directions about
25 what to do with respect to, you know, because you're

1 there, because you're strong guys, and because you're
2 the police, that, you know, put him up on the gurney,
3 right?

4 A. Yes.

5 Q. Okay. So it seems to -- and I could be wrong, is
6 there teamwork, at least some sense of teamwork between
7 the paramedics and you during these 5150s?

8 MR. KANTER: Objection. Lacks foundation the
9 5150 was even in place. It's lack --

10 BY MR. NISENBAUM:

11 Q. Okay. During an attempted 5150?

12 MR. KANTER: It's argumentative. Same objection.

13 MR. FINE: Join.

14 THE WITNESS: As first responders, we all work
15 together. We try to help each other out.

16 BY MR. NISENBAUM:

17 Q. Okay. And so sometimes the, you know, the --
18 sometimes the paramedics will tell you to do certain
19 things and you'll do them, right?

20 MR. KANTER: Objection. Incomplete hypothetical.
21 Vague and ambiguous and overly broad.

22 MR. FINE: Join.

23 THE WITNESS: What do you mean? Like, tell us to
24 do what?

25 ///

1 BY MR. NISENBAUM:

2 Q. Well, like he's asking you to help put him on the
3 gurney.

4 That would -- that would be typical, right?

5 A. They'll ask for help, yeah.

6 Q. And it's expected that you facilitate that,
7 correct?

8 MR. FINE: Calls for speculation. Lacks
9 foundation. Overbroad. Incomplete hypothetical.

10 MR. KANTER: Join.

11 THE WITNESS: I'm sure we could decline helping
12 them put somebody on the gurney, but I don't really see
13 that happening.

14 BY MR. NISENBAUM:

15 Q. You'd actually get in trouble if you did, right?
16 I would think.

17 MR. FINE: Same objections.

18 MR. KANTER: Join.

19 BY MR. NISENBAUM:

20 Q. Okay. Go ahead. I need the answer.

21 A. No. That's a safety issue, or I'm going to end
22 up hurting my back, picking somebody up probably -- I
23 don't think I'd get in trouble -- we'd get in trouble
24 for declining to pick somebody -- helping them put
25 somebody on a gurney.

1 Q. Of course. If you had a good reason.

2 If the paramedic told you to shoot somebody,
3 you'd probably get in trouble if that was the only
4 reason you shot them, right? I'm not saying that --

5 A. I would hope they would know I'd never say that.

6 Q. Yeah, I agree.

7 But my point, obviously, you don't -- I'm not
8 saying that there's a requirement that you do what they
9 tell you to do, but generally speaking, if it's within
10 the course of your -- what you perceive of as your
11 duties, you're going to do it, right?

12 MR. FINE: Asked and answered. Same objections
13 as before.

14 MR. KANTER: Join.

15 THE WITNESS: Yes.

16 BY MR. NISENBAUM:

17 Q. Okay. Thank you.

18 All right. Continuing. Hopefully, I have
19 five minutes left.

20 All right. Pausing at 8:21.

21 Mr. Gutzalenko has been put basically on the
22 gurney.

23 Did you feel like -- was his body dead weight at
24 that time? Did it feel like he was resisting? What did
25 it feel like?

1 A. I didn't put him on the gurney.

2 Q. Okay. Did it seem to you like he was moving or
3 even alive?

4 A. He -- he wasn't moving. But I didn't know if he
5 was alive.

6 Q. Okay.

7 MR. FINE: Objection.

8 (Reporter clarification.)

9 MR. FINE: Calls for speculation. Calls for
10 expert opinion. Thank you.

11 BY MR. NISENBAUM:

12 Q. The movement that you saw was movement that would
13 have been consistent with his body being jostled by
14 other people moving him, correct?

15 MR. FINE: Same objections.

16 THE WITNESS: I was off behind them, so I just
17 saw them put him on the -- they were putting him on the
18 gurney, so I didn't see if he was breathing or he was
19 talking anymore. I -- I'm not in this gurney placement,
20 to my knowledge.

21 BY MR. NISENBAUM:

22 Q. All right. Continuing at 8:21.

23 Were you there when you heard someone said,
24 "Ivan, can you breathe, buddy?"

25 A. Yeah. I need -- I need to hear the voice again,

1 but what I recall is I asked, "Is he breathing?"

2 And I think Officer Tagorda said he's turning
3 blue.

4 Q. That is exactly what happened. He's blue in the
5 face, I think is what's said.

6 Continuing 8:32.

7 That's at 8:50. You just heard Officer Tagorda
8 say, "He's blue in the face"?

9 A. Yes.

10 Q. Okay. And looking at him, what we just saw, and
11 he doesn't look alive, just based on looking at him,
12 right?

13 MR. FINE: Calls for speculation. Calls for
14 expert opinion.

15 BY MR. NISENBAUM:

16 Q. All right. 8:54 is where I'm paused at. Axon
17 time stamp 18:53:38, I believe. Kind of hard to read.

18 Do you have -- did you see this part?

19 A. Because I asked if he was breathing and coughs,
20 coughs, coughs and -- but I can't -- I can't see him
21 because of the paramedics blocking my view.

22 Q. Okay.

23 A. So Officer Tran's the one removing handcuffs, I
24 believe.

25 Q. Right. And --

1 A. I was going to remove them, but I had my handcuff
2 key in my hand. But Officer Tran went ahead and looks
3 like jumped in.

4 Q. Okay. Do you know what a LUCAS device is?

5 A. LUCAS, is that the chest compression machine?

6 Q. That's exactly what it is.

7 A. Okay. I vaguely remember it, but yes.

8 Q. Okay. It's obvious that there's CPR. I'll just
9 play it. But I'll forward to 9:14.

10 9:26, someone was asking for a LUCAS. I heard it
11 from two different people. Do you know whose voices
12 those were?

13 A. Probably somebody from medical because it's not
14 us.

15 Q. Right.

16 And it looks like they're about to start doing
17 CPR, right?

18 A. Yes.

19 Q. Okay. So obviously, at that point, you know that
20 he's not breathing and doesn't have a pulse, correct?

21 MR. FINE: Objection. Lacks foundation. Calls
22 for speculation.

23 MR. KANTER: Join.

24 BY MR. NISENBAUM:

25 Q. He had certainly gone unresponsive.

1 (Reporter clarification.)

2 THE WITNESS: I said yes it -- appears to be that
3 they're going to start CPR. That usually happens when
4 they don't have a pulse -- pulse or heartbeat.

5 BY MR. NISENBAUM:

6 Q. Right.

7 And so it was -- I mean, I'm basically done, so
8 let me just ask you a couple of final questions. I've
9 read the review of -- the internal review. It's pretty
10 clear from looking at the video that Officer Tran did
11 have a knee in -- against Mr. Gutzalenko's back, you
12 agree with that, right, during some points in time?

13 MR. FINE: Vague and ambiguous.

14 THE WITNESS: What is this review you're talking
15 about?

16 BY MR. NISENBAUM:

17 Q. I'm talking about -- well, I assume that you've
18 read the officer involved protocol incident that was
19 basically the internal review?

20 MR. FINE: Vague as to internal review.

21 THE WITNESS: Is this from OPA or the Civilian
22 Police Commission?

23 BY MR. NISENBAUM:

24 Q. I believe this is the Richmond police officer --
25 the Richmond Police Department report. It's the officer

1 involved protocol incident, OPA 2021-006.

2 What is OPA?

3 A. Office of Professional Standards.

4 Q. Right.

5 So that's the internal police department report,
6 correct?

7 A. Like, we are not -- but again, I haven't -- I
8 haven't read that.

9 Q. Okay. Do you know what the results were?

10 A. I was -- I -- we were cleared, I know that, by
11 the grand jury and the district attorney's office.

12 Q. It's not a grand jury. It's a coroner's inquest.

13 A. Well --

14 Q. That's not a grand jury.

15 A. Well, we were cleared by the coroner's inquest,
16 and we were also cleared by the district attorney's
17 office.

18 Q. Right.

19 Did any of those reports identify either the
20 injection of Versed -- to your knowledge, did any of
21 those reports identify the injection of Versed or
22 Officer Tran's knee in Mr. Gutzalenko's back as
23 contributing to his death?

24 MR. FINE: Calls for speculation. Overbroad.

25 MR. KANTER: Join. And also documents will speak

1 for themselves.

2 MR. FINE: Join.

3 MR. NISENBAUM: You want to join him? Trust me.

4 THE WITNESS: I never reviewed these documents
5 from the coroner's inquest. So I don't know what -- I
6 don't know what it said. I -- so I -- I -- I don't
7 know. I can't speak on what it says.

8 BY MR. NISENBAUM:

9 Q. You would agree that if the document -- if the
10 review said that there was never -- that Officer Tran's
11 knee was never in his back, on Mr. Gutzalenko's back, or
12 pressing against Mr. Gutzalenko's back, that would be
13 inaccurate compared to the video that we just watched,
14 correct?

15 MR. FINE: Overbroad. Vague and ambiguous.

16 THE WITNESS: I -- still looks like it was
17 controlling movement. And I still say it's in the
18 shoulder region and not on his entire back. Lower back,
19 upper shoulder is what I see, and that's my perception.

20 BY MR. NISENBAUM:

21 Q. Okay. Final question.

22 If you were to have observed, first of all --
23 well, final question.

24 If you were to have observed his knee in
25 Mr. Gutzalenko's back applying downward pressure, I

1 think you testified earlier that you would have been
2 obligated under Richmond Police Department policy to
3 correct that; is that correct?

4 MR. FINE: Misstates testimony.

5 THE WITNESS: We -- we would -- if we see
6 anything that's going to cause danger to a member of the
7 public, we have to intercede.

8 BY MR. NISENBAUM:

9 Q. Okay. And that includes a person like
10 Mr. Gutzalenko who you're arresting and using force
11 against, correct?

12 MR. FINE: Incomplete hypothetical. Same
13 objections.

14 THE WITNESS: If I see the force and it appears
15 to be reasonable and not causing any danger, you know,
16 that I see he's breathing after he gets handcuffed. As
17 soon as we handcuff, we roll him on the side and he's
18 breathing, I'm not understanding why it's a factor
19 anyway.

20 MR. NISENBAUM: Okay. I don't have any other
21 questions. Thank you.

22 MR. FINE: Scott, do you have any?

23 MR. KANTER: I just have a few follow-up
24 questions. If you want to take a break first, that's
25 fine.

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 MR. FINE: I'd really appreciate that. Just
2 five minutes, if that's okay?

3 MR. KANTER: Sure.

4 MR. FINE: Thanks so much.

5 (Off the record.)

6 EXAMINATION

7 BY MR. KANTER:

8 Q. Officer Hall, I just have a few questions, just
9 some follow-up.

10 Was it your understanding that the paramedics
11 were called to the scene because Mr. Gutzalenko had a
12 head bruise, bloody hands, possible injuries that needed
13 medical treatment?

14 A. Yes.

15 Q. They weren't called for any other reason,
16 correct?

17 A. Not at the time, no.

18 Q. And it's not the police's role to provide medical
19 care, correct?

20 A. Correct.

21 Q. Mr. Gutzalenko wasn't formally placed on a 5150
22 hold in this case, correct?

23 A. Correct.

24 Q. That was just something that was under
25 consideration?

1 A. Yes.

2 Q. And Mr. Gutzalenko was being placed in police
3 custody with handcuffs in order to be detained while
4 investigating the claim to vandalism that had gone on,
5 correct?

6 MR. NISENBAUM: Objection. These are all leading
7 questions.

8 MR. KANTER: Well, he's not my witness.

9 BY MR. KANTER:

10 Q. You can answer. Is that correct?

11 A. Yes.

12 MR. NISENBAUM: I'm sorry. Fine. That's fine.
13 You're right.

14 BY MR. KANTER:

15 Q. And there would also be consideration about 5150
16 hold, right?

17 A. Yes.

18 Q. And you didn't direct the paramedic to use a
19 sedative in this case, correct?

20 A. No.

21 Q. None of the police officers did, right?

22 A. No.

23 Q. Use of the sedative was a decision the paramedic
24 made for his own purposes in providing medical care,
25 correct?

1 A. Yes.

2 Q. Those are all my questions. Thank you.

3 MR. FINE: I just have a few, unless, Ben, you
4 want to do some follow-up on that first?

5 MR. NISENBAUM: No.

6 MR. FINE: Okay.

7 EXAMINATION

8 BY MR. FINE:

9 Q. Officer Hall, at the time of this incident, did
10 the Richmond Police Department have a policy that said
11 that officers were at no time, under any circumstances,
12 allowed to make contact with a subject's back?

13 A. There was no policy in place, no.

14 Q. Well, was there any policy in place along those
15 lines with respect to any specific area of the back that
16 you're not allowed to make contact with under any
17 circumstances?

18 A. No. No part of -- there's no restrictions on
19 back.

20 Q. Okay. At the time of this incident, was it your
21 understanding that under RPD policy, officers were
22 permitted to make contact with a subject's back if the
23 circumstances called for, such as if they were
24 resisting?

25 A. Yes.

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 Q. Okay. And in your career, had you ever had
2 occasion up to that point, where it was necessary under
3 the circumstances and you believed it to be reasonable,
4 to make contact with the subject's back or center back
5 as part of taking that -- strike that -- as part of
6 detaining that individual?

7 A. Yes.

8 Q. That's all I got.

9 MR. NISENBAUM: Perfect.

10 How long do we have for lunch?

11 THE REPORTER: Would anybody like to order a copy
12 of the transcript?

13 MR. FINE: Absolutely.

14 MR. KANTER: Yes. Electronic copy.

15 (Deposition concluded at 1:13 p.m.)
16

17 --o0o--
18
19
20
21
22
23
24
25

DEPOSITION OF OFFICER MARK HALL - VIDEOCONFERENCE

1 STATE OF CALIFORNIA)
2)
3 COUNTY OF FRESNO)

4 I, LILIANA RODRIGUEZ, Certified Shorthand Reporter,
5 in and for the State of California, do hereby certify:

6 That the foregoing proceedings were taken before me
7 remotely at the time and place herein set forth; that
8 any witnesses in the foregoing proceedings, prior to
9 testifying, were duly sworn; that a record of the
10 proceedings was made by me using machine shorthand which
11 was thereafter transcribed under my direction; that the
12 foregoing is a true record of the testimony given.

13 Pursuant to Federal Rule 30(e), transcript review
14 was requested.

15 I further certify that I am neither financially
16 interested in the action, nor a relative or employee of
17 any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date subscribed my
19 name.

20
21 DATED: _9_/_19_/_24_

22 Fresno, California

23
24 /s/Liliana Rodriguez
25 LILIANA RODRIGUEZ, CSR No. 13783

EXHIBIT 5

**BODY-WORN VIDEO PROPOSED TO BE FILED
UNDER SEAL**

EXHIBIT 5 to the Declaration of Nicholas Fine. A true and correct copy of the video from Officer Tom Tran's body-worn camera for the subject incident.

Please click on the following link:

EXHIBIT 6

**BODY-WORN VIDEO PROPOSED TO BE FILED
UNDER SEAL**

EXHIBIT 6 to the Declaration of Nicholas Fine. A true and correct copy of the video from Officer Cedric Tagorda's body-worn camera for the subject incident.

Please click on the following link:

EXHIBIT 7

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

--o0o--

IVAN GUTZALENKO, Deceased,)
through his Co-Successors in)
Interest, N.G. and N.I.G.,)
minors through their mother)
and Next Friend, Honey)
Gutzalenko, individually)
and as Co-Successors in)
Interest for IVAN GUTZALENKO,)
Deceased,)

Plaintiffs,)

vs.)

CITY OF RICHMOND, et al.,)

Defendants.)

CERTIFIED COPY

Case No.:
3:22-cv-02130-EMC

CERTIFIED COPY

VIDEOCONFERENCE

DEPOSITION OF EMT DAMON RICHARDSON

WEDNESDAY, November 20, 2024

9:59 a.m. - 3:20 p.m.

REPORTED BY: DEBRA J. SKAGGS, CSR NO. 7857

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

1	INDEX OF EXAMINATION	
2		PAGE
3	PROCEEDINGS:	5
4	EXAMINATION BY	
5	Attorney Nisenbaum	6
6	AFTERNOON SESSION	
7	Attorney Nisenbaum (Resumed)	109
8	Attorney Fine	168
9		
10		
11	--o0o--	
12	Appearance Page	3
13	Exhibit Page	4
14	Location	5
15	Reporter's Certificate	173
16	Disposition	174
17	Attorney's Notes	175

18

19 --o0o--

20

21

22

23

24

25

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

REMOTE APPEARANCES

FOR PLAINTIFFS:

LAW OFFICES OF JOHN L. BURRIS
BY: BENJAMIN NISENBAUM, ATTORNEY AT LAW
KRITHI BASU, ASSOCIATE ATTORNEY
Airport Corporate Centre
7677 Oakport Street, Suite 1120
Oakland, California 94621
(510) 839-5200 Fax: (510) 839-3882
bnisenbaum@gmail.com

FOR DEFENDANT AMERICAN MEDICAL RESPONSE WEST and EMT
DAMON RICHARDSON:

BY: SCOTT R. KANTER, ATTORNEY AT LAW
HINSHAW, MARSH, STILL & HINSHAW, LLP
12901 Saratoga Avenue
Saratoga, California 95070
(408) 861-6500 Fax (408) 257-6645
skanter@hinshaw-law.com

FOR DEFENDANTS CITY OF RICHMOND and OFFICERS HALL, TRAN
and TAGORDA:

BY: NICHOLAS FINE, ATTORNEY AT LAW
ORBACH, HUFF & HENDERSON LLP
6200 Stoneridge Mall Road, Suite 225
Pleasanton, CA 94588
(510) 999-7908 Fax: (510) 999-7918
nfine@ohhlegal.com

--o0o--

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

INDEX TO EXHIBITS

EMT DAMON RICHARDSON

WEDNESDAY, NOVEMBER 20, 2024

--o0o--

EXHIBITS

PLAINTIFF'S EXHIBITS:	PAGE
Exhibit 1 - 89 pages - Group exhibit of the documents production by Defendant AMR West	20
Exhibit 2 - 5 pages - DailyMed - MIDAZOLAM injection, solution label printout	31
Exhibit 3 - 1 MP3 audio file - Designated as "Damon Richardson Interview (Conf City_1209) copy.MP3"	44
Exhibit 4 - 1 MP3 audio file - Designated as "Damon Richardson Continued (Conf City_1208) copy.MP3"	48
Exhibit 5 - 1 video file - Officer Tagorda's body cam footage designated as "Tagorda (City_839) Confidential.MP4"	56
Exhibit 6 - 20 pages - Pfizer Midazolam Injection Warning	95

--o0o--

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

1 BE IT REMEMBERED that, pursuant to Notice on
2 Wednesday, November 20, 2024, commencing at the hour of
3 9:59 A.M., thereof; in their respective locations via
4 Zoom, as noticed by the attorneys for the Plaintiffs,
5 LAW OFFICES OF JOHN L. BURRIS, Airport Corporate Center,
6 7677 Oakport Street, Suite 1120, Oakland, California, was
7 before me, DEBRA J. SKAGGS, CSR No. 7857, a Certified
8 Shorthand Reporter, State of California, remotely
9 appeared.

10 EMT DAMON RICHARDSON,
11 sworn as a witness herein, appearing remotely; who, being
12 by me duly sworn or having affirmed, was examined and
13 testified as is hereinafter set forth.

14 --o0o--

15 PROCEEDINGS

16 (Witness duly sworn.)

17 THE REPORTER: Will you please state -- you can
18 put your hand down.

19 Will you please state the city and state where
20 you're located taking your deposition today, please.

21 THE WITNESS: I am in the city of San Francisco,
22 county of San Francisco in California.

23 THE REPORTER: Thank you.

24 Will the attorneys state their appearances, who
25 they represent, and anyone else in the room with them that's

1 a party to the case, please.

2 ATTORNEY NISENBAUM: Yes. Ben Nisenbaum for the
3 Plaintiff. Also -- Plaintiffs -- also in the room is Krithi
4 Basu, an associate attorney with was.

5 ATTORNEY KANTER: Scott Kanter on behalf of
6 Defendants American Medical Response West and Damon
7 Richardson.

8 ATTORNEY FINE: Nick Fine on behalf of the City of
9 Richmond defendants.

10 THE REPORTER: Okay. You can begin.

11 ATTORNEY NISENBAUM: Thank you.

12 EXAMINATION

13 BY ATTORNEY NISENBAUM:

14 Q. Can you please state and spell your name.

15 A. Damon Richardson. Spelled D-a-m-o-n; last name is
16 R-i-c-h-a-r-d-s-o-n.

17 Q. Okay. And what is your current occupation?

18 A. I am a Fire and EMS Specialist with Tesla.

19 Q. The car company?

20 A. Yes.

21 Q. What do you do there?

22 A. I put out fires and I assist our employees who get
23 ill or injured.

24 Q. But you're not -- are you traveling out in the
25 field, like on the streets to do that, or...

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

1 A. No. It's strictly within the confines of Tesla
2 property.

3 Q. Okay. And when did you start working for Tesla?

4 A. April of 2022.

5 Q. Prior to that, how were you employed?

6 A. I was working with American Medical Response in
7 Contra Costa County full-time, and as a Per Diem Paramedic
8 for the City and County of San Francisco Fire Department.

9 Q. And was the San Francisco Fire Department part
10 time? You said Per --

11 A. Yes, it was.

12 Q. Okay. And how long did you work for AMR as a
13 paramedic -- or as an -- what was your role there? An
14 EM- --

15 A. I was a paramedic for AMR, and I started in 2005,
16 and I quit in 2022. So 17 years, I guess.

17 Q. Okay. And can I ask you why you left AMR?

18 A. Just getting too dangerous to work on the streets
19 anymore.

20 Q. Okay. And to be a paramedic, do you have some
21 qualifications?

22 A. Yeah. I have a State Paramedic License that I've
23 had since 2005.

24 Q. And what's the difference between an EMT and a
25 paramedic?

1 A. There is different levels of EMT.

2 A lot of people think that an EMT and a paramedic
3 are the same, but an EMT Basic is the first step of becoming
4 an EMT. And then in the Federal system you have an
5 Intermediate, which is some more training; you're allowed to
6 do more interventions.

7 And then in California -- or nationwide, we also
8 have a Paramedic, which is more training; you're allowed to
9 do more interventions; work with more drugs.

10 California doesn't recognize the Intermediate
11 unless it's -- you're a Federal paramedic with a Federal
12 agency.

13 Q. Okay. And what type of a -- it sounds like you
14 have a State Paramedic license; is that right?

15 A. That is correct.

16 Q. And are you -- with respect to the categories of
17 EMT you described, are you an EMT Basic?

18 A. I am an EMT Paramedic.

19 Q. EMT Paramedic. Okay.

20 Does that give you any authority with respect to
21 the Federal -- or any additional abilities to do things with
22 respect to the Federal things you just mentioned?

23 A. No. As a paramedic, you work under the scope that
24 you're allowed by the county or the city that you're working
25 under.

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

1 Q. Okay. And did you go to school to become a
2 paramedic?

3 A. Yes. I went to City College of San Francisco.

4 Q. When did you graduate CCSF?

5 A. I believe 2004 as a paramedic -- from the
6 paramedic program.

7 Q. And was your first job as a paramedic with AMR?

8 A. Yes, it was.

9 Q. When you were at the -- at CCSF, did you receive
10 training -- well, actually. Let me just give you a couple
11 admonitions -- or ask you a couple questions.

12 Have you ever had your deposition taken before?

13 A. Yes.

14 Q. Okay. How many times would you estimate?

15 A. I think two or three.

16 Q. Have you ever been a defendant in a civil lawsuit
17 before?

18 A. No.

19 Q. When your deposition was taken previously, was it
20 as a witness?

21 A. Yes.

22 Q. And I take it you've had a chance to talk with
23 your counsel to prepare for this deposition?

24 A. Yes.

25 Q. What documents have you reviewed in preparation?

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

1 A. I reviewed my PCR; my Patient Care Report. I
2 reviewed the transcripts from the coroner's hearing; the
3 part that I spoke about during that. And my resum .

4 Q. Okay. And the PC- -- let me ask you this.

5 Did you review the interview that you gave after
6 the incident that was recorded?

7 A. To the police officer at the hospital? Is that
8 what you're talking about?

9 Q. Correct.

10 A. Maybe a long time ago. I don't remember much of
11 it from that.

12 Q. All right. Is it fair to say that when you gave
13 that interview, events were freshest in your mind?

14 A. Yes.

15 Q. Okay. And when you reviewed the coroner's inquest
16 testimony, did you see anything in it that you thought was
17 inaccurate or that you might have misremembered?

18 A. No.

19 Q. You're familiar with the term "chemical
20 restraints"?

21 A. Yes.

22 Q. All right. And what are those?

23 A. It's a way of calming down a person with a
24 medication.

25 Q. Okay. Were you trained in the use of chemical

1 restraints at CCSF?

2 A. Not so much at CCSF, but at AMR.

3 Q. Okay. What kind of licensing was required in
4 order to be able to administer chemical restraints based on
5 your understanding?

6 A. I'm sorry? Repeat your question?

7 Q. What kind of licensing -- okay. I didn't give you
8 any real admonitions.

9 One of them is let me finish the question before
10 you start to answer. Another is, you know, try not to talk
11 over each other. I find it helpful to allow a pause between
12 my question and your answer. Easier for the court reporter;
13 it allows your lawyer to object, if he wants to; and, you
14 know, we don't step over each other.

15 When the deposition is completed, you'll have a
16 chance to review it. You can make changes to it. If you
17 make changes that are substantive in nature, then that can
18 be used to call your credibility into question.

19 Do you understand that?

20 A. Understood.

21 Q. Okay. All right. And -- obviously -- you didn't
22 receive any training in how to provide courtroom testimony
23 in any job you've been in or any school you've attended;
24 right?

25 A. I have not had any training.

1 Q. Okay. So my question.

2 With respect to administering chemical restraints,
3 are there different types of chemical restraints that you've
4 been trained to use?

5 A. I've only been trained to use Versed as a chemical
6 restraint.

7 Q. And Versed is also -- the generic of Versed is
8 midazolam; is that right?

9 A. Correct.

10 Q. And the rules that apply to administering Versed
11 are the same rules that apply to administering midazolam;
12 correct?

13 A. Yes, it's the same medication.

14 Q. Okay. All right. So as you sit here, it's fair
15 to say that you received no training at the school that you
16 went to and be- -- to become an EMT in administering
17 chemical restraints; correct?

18 A. Not that I remember.

19 Q. Did you receive any training in the side effects
20 of sedatives like Versed/midazolam?

21 A. Yes.

22 Q. You received that training at the City and County
23 of San Francisco, or afterwards?

24 A. Well, the side effects I learned in school at City
25 College of San Francisco, and also from AMR, and also from

1 San Francisco Fire Department.

2 Q. And what were you trained in terms of the
3 potential side effects of Versed?

4 A. Mainly the possibility of interacting with other
5 drugs and causing respiratory depression.

6 Q. Were you trained that it had to -- that midazolam
7 could only cause respiratory depression if it interacted
8 with other drugs, or that it could cause respiratory
9 depression on its own?

10 A. We were taught that it could cause respiratory
11 depression on its own if it was administered in too high of
12 a dose.

13 Q. All right. And you were taught that at City and
14 County of San Francisco?

15 A. City and County of San Francisco, AMR, and City
16 College of San Francisco.

17 Q. Okay. So you've known this your entire career.

18 A. Yes.

19 Q. Okay. And you said if given in too high of a
20 dose.

21 What is your training with respect to what a
22 proper dose of midazolam is?

23 A. It depends on what we are using it for. For
24 chemical restraints, it's a 5-milligram muscular injection.
25 If we have to start an IV, it's at a lower dose.

1 Q. Okay. What's the difference between a muscular
2 injection and starting an IV?

3 A. The IV is directly into the vein, and a muscular
4 injection is just basically an old-fashioned shot in the
5 muscle of an upper arm or thigh.

6 Q. Okay. Well, why does it make a difference if it's
7 administered in the vein as opposed to the muscle?

8 A. In the vein, it has a higher potential effect. In
9 the muscle, it takes time to get into the system.

10 Q. That means if it -- if mi- -- if Versed is
11 administered intravenously, then it would take a smaller
12 amount of Versed to achieve the same effect as an
13 intramuscular shot; is that right?

14 A. Correct -- correct.

15 Q. Is it also fair to say that if Versed is
16 administered intravenously, it acts faster than it would if
17 it's administered intramuscularly?

18 A. Correct.

19 Q. Okay. Are you trained to administer Versed either
20 intramuscularly or intravenously?

21 A. Yes.

22 Q. So you know how to do both of these; right?

23 A. Yes, I do.

24 Q. And you've known how to do that for how long,
25 would you estimate?

1 A. Since I graduated the paramedic program.

2 Q. And I assume you have in fact administered Versed
3 in the field -- apart from this incident involving
4 Mr. Gutzalenko -- since you graduated the paramedics
5 program?

6 A. Yes, I've administered it numerous times.

7 Q. Can you estimate how many times?

8 A. I don't -- I -- no, I can't estimate. Probably --
9 it's not going to be very accurate, but I would guess maybe
10 100 times.

11 Q. Okay. And it's fair to say that's just a range.
12 It's somewhere in a range that it could be more, it could be
13 less. And you can't really say how much more, how much
14 less; you just know it's a lot of times. Right?

15 A. Correct.

16 Q. Okay. All right. Have you been trained that if
17 you administer Versed -- too much Versed, that it can be
18 lethal?

19 A. I have.

20 Q. What is your training in that regard?

21 A. Through the City College of San Francisco, the San
22 Francisco Fire Department, and also AMR reiterating, during
23 our quarterly classes, the use of Versed.

24 Q. Okay. I understand that, but how much Versed is
25 too much?

1 ATTORNEY KANTER: I'll object that it calls for
2 expert opinion; incomplete hypothetical.

3 You can answer if you've been trained.

4 ATTORNEY NISENBAUM: Q. Based on your training.

5 A. (To Attorney Kanter.) Should I answer the
6 question?

7 ATTORNEY KANTER: You can if you're able.

8 THE WITNESS: Can you repeat the question, please?

9 ATTORNEY NISENBAUM: Q. How much Versed is too
10 much?

11 ATTORNEY KANTER: Same objections.

12 THE WITNESS: Anything above our protocol is too
13 much Versed based on what we're using it for.

14 ATTORNEY NISENBAUM: Q. And you said your protocol
15 is -- well, your training is you can administer 5 milligrams
16 muscularly -- intramuscularly. Correct?

17 A. Correct, as the first dose.

18 Q. Okay. And then the maximum you can give a person
19 as a chemical restraint is 10 milligrams?

20 A. Depending on the situation, yes.

21 Q. And how do you know whether or not when you put --
22 when you stick a needle in a person, that it's going
23 intramuscularly as opposed to a vein?

24 A. Usually the veins that we start IVs on are a lot
25 closer to the surface of the skin. And when we give

1 intramuscular injections, we try to go to a more larger
2 muscle. So.

3 Q. Okay. Well, are you trained to do anything to
4 determine whether or not you've hit a vein?

5 A. Back in the old days, we were supposed to kind of
6 like do an aspiration so you don't get any blood back. But
7 I think that's a practice that's kind of gone away for quite
8 some time.

9 Q. Well, what's the purpose of doing an aspiration?
10 First, what is an aspiration?

11 A. An aspiration is when you inject the needle into a
12 person; you pull back on the plunger to see if any blood
13 comes back.

14 Q. Okay. So is it fair to say that in the process of
15 aspiration -- pulling back on the plunger -- if blood comes
16 back -- if blood back- -- I guess backflows into the
17 syringe, then you know you've hit a vein?

18 A. Yeah, I guess so. I've never hit a vein before
19 when I've -- did IM injections and aspirated.

20 Q. Okay. Well -- but of course you've been trained
21 that that's a possibility every time you inject someone
22 intramuscularly. It's possible that you hit a vein; right?

23 A. Yeah, it's possible.

24 Q. Okay. All right. And you said in the old days
25 you were trained to do aspirations. So what time period is

1 the old days?

2 A. When I first started school. 2000- -- or when I
3 graduated, 2004.

4 Q. And was there some time period when this idea that
5 you no longer check to see whether you've hit a vein -- was
6 there some time period that that stopped -- that you were
7 trained that you should no longer do that?

8 A. When --

9 ATTORNEY KANTER: Hold on.

10 Object; vague and ambiguous.

11 Are you asking when he was trained to no longer
12 aspirate?

13 ATTORNEY NISENBAUM: Yes.

14 ATTORNEY KANTER: Okay.

15 ATTORNEY NISENBAUM: Q. When giving an
16 intermuscular injection of a sedative like Versed.

17 A. I can't give an exact time period, but it does
18 correspond with the use of medications to chemically
19 restrain patients.

20 Q. Okay. Well, can you give me an approximate time
21 period?

22 A. I'd say probably 10, 15 years.

23 Q. Okay. So in the past 10, 15 -- so starting about
24 10 to 15 years ago, you were trained -- strike that. I
25 don't think I asked you this question.

1 Were you ever trained that you should stop
2 aspirating the syringe when you administer a sedative
3 intramuscularly?

4 A. I remember taking a few classes that depending on
5 the situation, aspiration could cause more damage to the
6 patient if we aspirate. And those situations were mainly
7 when we have violent subjects we're trying to chemically
8 restrain.

9 Q. Is that when the person is acting violently at the
10 moment?

11 A. Correct.

12 Q. Okay. And is that because -- what was your
13 understanding as to why?

14 A. Because when somebody is thrashing around, the
15 needle can cause more damage underneath the skin that we
16 cannot see.

17 Q. Okay. And you understood that if you hit a
18 vein -- well, actually, let me pull up the chart.

19 ATTORNEY NISENBAUM: We'll make this the first
20 exhibit.

21 THE REPORTER: Exhibit 1.

22 ATTORNEY NISENBAUM: Yep.

23 It's an 89-page document. It is the
24 Defendant's -- Defendant American Medical Response West's
25 Responses to Plaintiffs' Request for Production of

1 Documents, and I'm going to share the screen.

2 (Plaintiffs' Exhibit 1 marked
3 for identification.)

4 ATTORNEY NISENBAUM: This is the Treatment
5 Guideline A03, Adult Behavioral, Contra Costa County
6 Emergency Medical Services.

7 (Pause.)

8 I'm not sure why it is showing only the toolbar.

9 THE REPORTER: It looks expanded. Like, a really
10 large font or something.

11 ATTORNEY NISENBAUM: Okay. That's crazy.

12 (Pause.)

13 It's showing the wrong thing. Maybe I can hide
14 this.

15 THE REPORTER: Maybe stop sharing and try again?

16 ATTORNEY NISENBAUM: Yeah.

17 Go back to this.

18 (Pause.)

19 I'm going to exit out; restart.

20 (Pause.)

21 Okay. Now let's see.

22 (Pause.)

23 Okay. We're there now?

24 THE REPORTER: Looks like it.

25 ATTORNEY NISENBAUM: Q. Okay. Can you see the

1 document?

2 A. Yes. It's a little small.

3 Q. Okay. Well --

4 A. There we go. Thank you.

5 Q. All right. Are you familiar with this document?

6 A. Yes, I am.

7 Q. What is it?

8 A. This is the protocol on how to administer Versed
9 for a chemical restraint.

10 Q. Okay. Now, you said that you're allowed to -- you
11 administer 5 milligrams intramuscularly, and you can
12 administer up to 10 milligrams; correct?

13 A. Correct.

14 Q. All right. So looking at this document. Is this
15 document -- do you know if this was in effect at the time --
16 it says "Effective January 2020."

17 This document was in effect at the time of the
18 incident with Mr. Gutzalenko; correct?

19 A. I believe so.

20 Q. Okay. So looking at it -- it's a flowchart;
21 correct?

22 A. Yes.

23 Q. And this is for the flowchart that controls the
24 administration of Versed as a chemical restraint in the
25 field by paramedics like you; correct?

1 A. Correct.

2 Q. So there is three boxes right below Adult
3 Behavioral. One is History, the other is Signs and
4 Symptoms, and the other is Differential.

5 What do those boxes mean?

6 A. The History is if you have a -- certain situations
7 that you could possibly use the drug for.

8 Signs and Symptoms are what you look for to -- for
9 an adult behavior crisis.

10 And the Differential are the other aspects that
11 could cause an adult behavior crisis.

12 Q. Okay. How does that affect whether or not you
13 administer Versed?

14 A. It -- it -- I'm not really sure I understand your
15 question. I mean, the -- we look for certain signs and
16 symptoms and/or history, if the person is able to give us
17 any type of history.

18 The Differential are the other things we have to
19 be aware of and can also define to give the Versed -- repeat
20 your question again?

21 Q. So those boxes -- the three boxes at the top --
22 they're considerations in whether or not to give a person
23 Versed?

24 A. Yeah. They are.

25 Q. Okay. All right. And then there is -- right

1 below it, there is a stop-sign-shaped box around a sentence
2 that says "Aggressive or agitated, possible psychosis,
3 possible danger to self or others."

4 And to the right is a box -- the same shape box
5 that's got a yellow background and is bold, and says
6 "Excited Delirium Syndrome." Underneath that it says
7 "Paranoia, disorientation, extremely aggressive or violent,
8 hallucinations, tachycardia, increased strength,
9 hyperthermia, and clearly a danger to self or others."

10 What is the difference between these two boxes?
11 Why are they there, if you know?

12 A. The one on the left -- the white stop sign -- is
13 for a person who is not as violent and aggressive, as
14 opposed to the yellow one for the excited delirium. Excited
15 delirium -- those patients tend to be more aggressive and
16 dangerous to themselves and others.

17 Q. So the heading on that in bold is called "Excited
18 Delirium Syndrome." Is that something you've been trained
19 in?

20 A. Yes.

21 Q. In your training, when you've been trained on
22 excited delirium, one of the things you've been trained is
23 that the person who alleges -- who allegedly exhibits
24 symptoms of excited delirium exhibits signs of hyperthermia;
25 correct?

1 A. Yes.

2 Q. What is hyperthermia?

3 A. It's a temperature. A high body temperature.

4 Q. It's a very high body temperature; correct?

5 A. I don't know what the readings would have to be
6 for it to be hyperthermic.

7 Q. Okay. Your understanding is that hyperthermia is
8 itself a medical emergency; correct?

9 A. It can be, yes.

10 Q. Hyperthermia is not just a low-grade fever, is it?

11 A. I don't know what the -- like I said -- what the
12 temperature readings would be for anybody to be considered
13 hyperthermic or to have a fever. As far as I'm concerned,
14 anybody that has a temperature above 98.6 is hyperthermic.

15 Q. I see. Okay. Well, let me ask you this.

16 Have you watched any videos in training that
17 purport to show people exhibiting signs of excited delirium?

18 A. I haven't seen any videos in training.

19 Q. Okay. So you've never been trained that in trying
20 to identify whether or not a person is suffering from
21 excited delirium, that you should look to see whether or not
22 they're drenched in sweat?

23 A. I haven't seen any videos in training for this,
24 but we have discussed it during our training sessions.

25 Q. Okay. You've discussed that what you're looking

1 for when you're -- if you're trying to identify excited
2 delirium, one of the physical things you're looking for is
3 whether or not there is, what they call, profuse sweating;
4 correct?

5 A. Okay. Or we call it diaphoresis, yes.

6 Q. "Diaphoresis." Okay. That's a term I haven't --
7 I was not familiar with.

8 But that's -- that means profuse sweating?

9 A. Yes.

10 Q. And that's something that would indicate a highly
11 elevated internal body temperature; correct?

12 A. Not all the time.

13 Q. Okay. Well, what causes diaphoresis other than
14 that?

15 A. Somebody could be having a cardiac event.
16 Somebody could be having a diabetic issue. There is
17 numerous things that could cause somebody to be diaphoretic.

18 Q. Right.

19 So excited delirium is -- well, let me ask you
20 this.

21 Are you still trained to use excited delirium?

22 ATTORNEY KANTER: Objection; vague and ambiguous;
23 overly broad.

24 I don't know what -- I'm not even sure I
25 understand the question.

1 ATTORNEY FINE: Join.

2 THE WITNESS: I don't understand the question
3 either. Repeat it?

4 ATTORNEY NISENBAUM: Q. Well, are you -- are you
5 trained to still use the term "excited delirium" or "excited
6 delirium syndrome"?

7 ATTORNEY KANTER: I'm going to object that it
8 misstates testimony.

9 He's just -- he was referring to this document;
10 not something he was -- anyways, you can answer.

11 THE WITNESS: As far as our training at Tesla, no.
12 But as a paramedic for the State of California, yes.

13 ATTORNEY NISENBAUM: Q. Okay. I see. Wow,
14 that's -- wow.

15 All right. So looking at this box -- looking at
16 these -- the flowchart, rather.

17 It says on the first, if they're aggressive or
18 agitated, possible psychosis, possible danger to self or
19 others, you can use midazolam, 5 milligrams, IM/IN.

20 That means -- does that mean intramuscular?
21 What's the IN?

22 A. Intranasal.

23 Q. Intranasal. Okay.

24 Or midazolam, 1 to 3 milligrams IV, in 1-milligram
25 increments.

1 Is it your understanding that the midazolam IV
2 being 1 to 3 milligrams -- increments -- is because -- is to
3 make sure that you don't accidentally overdose the person
4 you're giving it to?

5 A. That's one reason. And it takes a -- it's more
6 potent when you give it via IV, like we discussed earlier.

7 Q. And if it's given -- let's see.

8 "May repeat every five minutes to effect. Maximum
9 of 5 milligrams."

10 So if the person is not exhibiting signs of
11 so-called excited delirium, the maximum you're allowed to
12 give is 5 milligrams; is that correct?

13 A. For that particular flowchart, yes.

14 Q. Well, what other flowchart controlled your -- how
15 much midazolam you could give people?

16 A. The excited delirium side.

17 Q. Well, it's part of the same flowchart; it's just
18 on the right side. Right?

19 A. It is the same flowchart, but it starts off with
20 either aggressive or agitated, and/or excited delirium.

21 Q. I understand.

22 Aggressive or agitated. I mean, that -- I take it
23 that means what it says: the person is acting aggressively
24 and agitated, exhibiting signs of possible psychosis, and is
25 possibly a danger to self or others.

1 Pretty self-explanatory; right?

2 A. Mm-hmm. Yes.

3 Q. Okay. Whereas excited delirium -- the yellow
4 one -- says paranoia, disorientation, extremely aggressive
5 or violent, hallucinations, tachycardia, increased strength,
6 hyperthermia, and clearly a danger to self or others.

7 So the difference, it seems like, is the person
8 should be exhibiting -- well, strike that.

9 Do they have to exhibit all of those signs, or
10 just some of them?

11 A. Just some of them.

12 Q. So paranoia, disorientation, extremely aggressive
13 or violent -- so it sounds like -- if I'm looking at this
14 correctly, the chart -- the box for excited delirium; that
15 side would be followed when you have a more extreme version
16 of the one on the left.

17 Is that fair to say?

18 A. That would be fair to say, yes. But the initial
19 dose of medication is the same for both boxes.

20 Q. Well, it's the same if it's being given
21 intramuscularly; correct?

22 A. Mm-hmm. Intramuscularly, yes.

23 Q. Right.

24 And you would agree that if you were to give a
25 person 5 milligrams intravenously, the effect, you would

1 expect, to be quite different than if it were intramuscular;
2 correct?

3 A. Correct.

4 Q. And the effect will be -- it would be far more
5 dangerous to give them 5 milligrams intravenously than it
6 would be to give it to them intramuscularly; correct?

7 ATTORNEY KANTER: I'm going to object it calls for
8 expert opinion the way you phrased it; it's vague and
9 ambiguous; and it's overly broad.

10 ATTORNEY NISENBAUM: Q. Based on your training.

11 ATTORNEY KANTER: Same objections.

12 ATTORNEY NISENBAUM: Q. Go ahead.

13 A. Say the question again, please?

14 Q. You would expect the effect of giving a person
15 5 milligrams intravenously of Versed would be more
16 dangerous for the person who you're giving it to, if
17 given intravenously, based on your training; correct?

18 ATTORNEY KANTER: I'll object -- object it's vague
19 and ambiguous; overly broad; it's an incomplete
20 hypothetical; and it calls for retrospective expert opinion.

21 ATTORNEY NISENBAUM: Q. Go ahead.

22 A. Correct.

23 Q. Okay. And one of those dangers that you've been
24 trained in, is that it would be -- it could affect -- it
25 could have the effect of depressing their respiration;

1 correct?

2 A. Correct.

3 Q. And it could depress it to a dangerous degree;

4 correct?

5 A. Correct.

6 Q. Okay. So I assume midazolam, when you get it, it
7 comes, like, in a little bottle or something?

8 A. It comes in a vial of 5 milligrams.

9 Q. Okay. Is there a warning label on this vial?

10 A. I don't remember seeing a warning label on the
11 vial because the vial is so small.

12 Q. I see.

13 Are you required to be familiar with the warning
14 labels on the drugs that you use in the field on other
15 people?

16 ATTORNEY KANTER: I'm going to object. The
17 question is vague.

18 Required by whom?

19 ATTORNEY NISENBAUM: Q. Classified -- your
20 policy -- by your employer's policy at AMR. AMR West.

21 ATTORNEY FINE: I'm just going to add it lacks
22 foundation.

23 THE WITNESS: We are required to know our -- the
24 hazards -- yes -- the warnings of the medications we use.

25 ATTORNEY NISENBAUM: Q. Okay. I'm going to stop

1 this share.

2 (Pause.)

3 Okay. Are you familiar with the National
4 Institute of Health?

5 A. No.

6 Q. Okay. Well...

7 I'm going to show you a document. We'll make this
8 Exhibit B.

9 THE REPORTER: Sorry, B or 2? You started with 1.

10 ATTORNEY NISENBAUM: 2. Sorry. Sorry. Make it
11 2. I always use letters, but.

12 (Plaintiffs' Exhibit 2 marked
13 for identification.)

14 ATTORNEY NISENBAUM: Q. So this is "DailyMed
15 MIDAZOLAM injection, solution."

16 "NDC Code" -- do you know what that is?

17 A. No, I do not.

18 Q. Okay. "Category: Human Prescription Label."

19 You know what "DEA Schedule" is, I assume?

20 A. Yeah. The Drug Enforcement Agency Schedule,
21 classification of drugs.

22 Q. And what is "CIV" within that classification, if
23 you know?

24 A. I do not know.

25 Q. Actually, it has a link here. Let me make sure

1 that I have the right one.

2 (Pause.)

3 Do you know what a "Boxed Warning" is?

4 A. We don't see the boxed warnings because we don't
5 get these drugs in boxes. They come in a secured box
6 delivered to us by our supervisors, so we don't get to see
7 the box warnings.

8 Q. Does your company hand out the flyer that shows
9 the box warning?

10 A. They do not.

11 Q. Okay. Do they train you on the contents of the
12 box warning?

13 A. They train us on the contraindications and the
14 possible side effects of the drugs.

15 Q. Okay. So to your knowledge, do the contra- -- and
16 when I say "your company," I'm referring to AMR West.

17 A. Right.

18 Q. Do you understand that?

19 I'm sorry. I didn't catch the answer.

20 A. Yes, AMR West.

21 Q. Okay. All right.

22 So this box warning for midazolam: "Personnel and
23 Equipment for Monitoring and Resuscitation."

24 "Adults and pediatrics: intravenous midazolam has
25 been associated with respiratory depression and respiratory

1 arrest, especially when used for sedation in noncritical
2 care settings."

3 What does that sentence mean, in English?

4 ATTORNEY KANTER: Well, wait a second.

5 I'm going to object. He's never reviewed this
6 before. He's not here to be your expert. I'm going to
7 instruct him not to answer.

8 It calls for his opinions --

9 ATTORNEY NISENBAUM: He can say he doesn't know
10 it, but how is that a basis for him not to answer?

11 ATTORNEY KANTER: Because the document speaks for
12 itself. He didn't prepare this boxed warning. He's never
13 reviewed it before. That's why.

14 ATTORNEY NISENBAUM: That's not a basis for him
15 not to answer.

16 ATTORNEY KANTER: If you -- you're asking for
17 expert opinion testimony about what this document says.

18 ATTORNEY NISENBAUM: No, I'm asking his
19 understanding of what this warning label says.

20 ATTORNEY KANTER: Well, you haven't established
21 that he had an understanding at the time of the care and
22 treatment involved in this case, and now you're just asking
23 him to interpret a document that speaks for itself.

24 ATTORNEY NISENBAUM: I'm not asking him to
25 interpret anything.

1 ATTORNEY NISENBAUM: Q. What is a "noncritical
2 care setting"? How about that? Can you tell me what that
3 is?

4 ATTORNEY KANTER: Outside of this document?

5 ATTORNEY NISENBAUM: Q. Tell me what that means to
6 you. That term.

7 ATTORNEY KANTER: You can answer.

8 THE WITNESS: A "noncritical care setting"? I
9 assume that "critical care" means inside of a hospital;
10 inside of an ICU.

11 ATTORNEY NISENBAUM: Q. Okay. All right.

12 Mr. Gutzalenko, when you injected him with
13 midazolam, was not in a hospital; not in an ICU. Correct?

14 A. Correct.

15 Q. Okay. And you gave Mr. Gutzalenko midazolam for
16 the purposes of sedation; correct?

17 A. For a chemical restraint.

18 Q. As a chemical restraint.

19 But the manner of the restraint was to cause
20 sedation; correct?

21 A. No, it was for a chemical restraint.

22 I had given midazolam numerous times to people to
23 where it helps restrain them but it doesn't sedate them.

24 Q. I see.

25 So you didn't -- so there was no purpose -- there

1 was no sedative purpose to giving Mr. Gutzalenko midazolam;
2 is that correct?

3 A. That was not my intention.

4 Q. Okay. You were simply trying to chemically
5 restrain him; correct?

6 A. Correct.

7 Q. And Mr. Gutzalenko -- was he being 5150ed at the
8 time?

9 ATTORNEY KANTER: Objection; lacks foundation;
10 calls for speculation.

11 ATTORNEY FINE: Join.

12 ATTORNEY NISENBAUM: Q. I'm sorry. What's the
13 answer?

14 A. I don't know.

15 Q. You don't know if he was being 5150ed?

16 A. I don't think it had been established yet.

17 Q. Okay. Was he being detained by police at the time
18 that you gave him this injection?

19 ATTORNEY KANTER: Objection; calls for
20 speculation; lacks foundation.

21 ATTORNEY FINE: Join.

22 THE WITNESS: I didn't know what the purpose of
23 the police officer's intent with Mr. Gutzalenko was.

24 ATTORNEY NISENBAUM: Q. So are you saying that you
25 did not know he was handcuffed when you injected him?

1 A. I knew that he was --

2 ATTORNEY KANTER: Objection -- hold on. Hold on.

3 Objection; argumentative.

4 Go ahead.

5 THE WITNESS: I knew he was handcuffed.

6 ATTORNEY NISENBAUM: Q. And when you first
7 encountered him, the handcuffing had not been completed;
8 correct?

9 A. Correct.

10 Q. Okay. So you knew he hadn't handcuffed himself;
11 correct?

12 A. I assumed that the police officer handcuffed him
13 when I was in the ambulance.

14 Q. Okay. And you understood, then, based on your
15 understanding -- and you've responded to police events many,
16 many times; correct?

17 A. Correct.

18 Q. Okay. And you have participated in restraining
19 subjects with the police; correct?

20 ATTORNEY FINE: Vague.

21 ATTORNEY KANTER: I'll join.

22 It's overly broad; incomplete hypothetical.

23 THE WITNESS: We have -- I have had the assistance
24 of police officers and Richmond Fire Department whenever
25 I've needed to restrain people to my gurney.

1 ATTORNEY NISENBAUM: Q. Okay. And you have
2 assisted the police in restraining people as well; correct?

3 ATTORNEY FINE: Objection --

4 ATTORNEY KANTER: Vague -- vague and ambiguous;
5 overly broad; incomplete hypothetical.

6 ATTORNEY FINE: Join.

7 THE WITNESS: I have only had the assistance of
8 Richmond PD to assist me in getting patients on my gurney.

9 ATTORNEY NISENBAUM: Q. Okay. And had they been
10 in custody when they were on your gurney when Richmond
11 Police assisted you?

12 A. Some have; some have not been.

13 Q. Okay. Is it fair to say, in your experience, the
14 officers tell you whether or not the person is being
15 detained or is in custody?

16 ATTORNEY KANTER: Objection; vague and ambiguous;
17 overly broad; incomplete hypothetical.

18 ATTORNEY FINE: Join.

19 THE WITNESS: Sometimes they do; sometimes they
20 don't.

21 ATTORNEY NISENBAUM: Q. Now, you heard that -- the
22 officers talking about putting Mr. Gutzalenko on a 5150;
23 correct?

24 A. Correct.

25 ATTORNEY KANTER: Objection --

1 THE WITNESS: Okay. Go ahead.

2 ATTORNEY KANTER: Allow me to object in between
3 the question and your answer, please.

4 THE WITNESS: Sorry.

5 ATTORNEY KANTER: I would just say it lacks
6 foundation and calls for speculation.

7 ATTORNEY FINE: Join.

8 Hey, Ben? Do you need the box warning up still?

9 ATTORNEY NISENBAUM: I'm going to come back to it,
10 but I'll --

11 ATTORNEY FINE: Got it.

12 ATTORNEY NISENBAUM: -- but I can take it off for
13 the -- I mean -- I'll come back to it.

14 ATTORNEY NISENBAUM: Q. Okay. You heard the
15 officers talking about putting Mr. Gutzalenko on a 5150 when
16 you were at the scene before he was handcuffed; correct?

17 ATTORNEY KANTER: Objection; calls for
18 speculation; lacks foundation.

19 ATTORNEY FINE: Join.

20 THE WITNESS: Correct.

21 ATTORNEY NISENBAUM: Q. You still have to answer.

22 A. I thought I did.

23 Correct.

24 Q. Okay. Thank you.

25 And what is a 5150, based on your understanding?

1 A. It's a 72-hour psychological hold.

2 Q. Okay. Is it, like, a voluntary thing that a
3 person can just walk away from?

4 A. No, it is not.

5 Q. Okay. Are you licensed to do a 5150 yourself?

6 A. No.

7 Q. Okay. So to your understanding, who performs a
8 5150?

9 ATTORNEY KANTER: Objection; lacks foundation;
10 calls for speculation.

11 ATTORNEY FINE: Join.

12 It's also vague.

13 THE WITNESS: Law enforcement and certain
14 psychological clinicians.

15 ATTORNEY NISENBAUM: Q. Okay. And you've
16 responded many times to law enforcement performing a 5150;
17 correct?

18 A. Correct.

19 Q. All right. And when a person is 5150ed, they get
20 detained by police and transported to a hospital or a
21 psychiatric facility; correct?

22 A. Correct.

23 Q. The ambulance is called; the ambulance is the one
24 that does the transporting to the facility. Correct?

25 ATTORNEY KANTER: Well, I'm going to object it's

1 an incomplete hypothetical; it's vague.

2 You can answer if you're able.

3 ATTORNEY FINE: Join.

4 ATTORNEY NISENBAUM: Q. For a 5150.

5 A. In Contra Costa County, yes.

6 Q. Okay. All right. Does an officer typically ride
7 with the person in the ambulance who is being 5150ed?

8 A. Not in Contra Costa County.

9 Q. So who -- so the person is in custody while
10 they're in the back of the ambulance on the 5150; correct?

11 A. I don't know the legal jargon. I don't know if
12 they're technically in custody or if they're just on a 5150
13 hold.

14 Q. So you don't know whether a 5150 -- I take it --
15 strike that.

16 I take it you don't know whether a 5150 hold is
17 actually a detention for law enforcement purposes; is that
18 right?

19 A. Correct.

20 ATTORNEY KANTER: Objection; vague and ambiguous;
21 overly broad.

22 You can answer.

23 ATTORNEY NISENBAUM: Q. But you do know it is a
24 forcible thing that the officer compels the person to do;
25 correct?

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

1 ATTORNEY FINE: It's vague and overbroad.

2 ATTORNEY KANTER: I'll join.

3 Argumentative.

4 You can answer.

5 THE WITNESS: Say the question again?

6 ATTORNEY NISENBAUM: Q. You do know that the 5150
7 is something that the officer compels the person to do?
8 They force it to happen; correct?

9 ATTORNEY FINE: Same objections.

10 THE WITNESS: Correct.

11 ATTORNEY NISENBAUM: Q. Okay. And you as a
12 paramedic in the back of the ambulance -- if the person told
13 you "Oh, can you just let me go?" while they're being
14 transported on a 5150, you couldn't do that, could you?

15 A. No, I could not.

16 Q. Okay. Part of your job is to make sure that that
17 person doesn't leave the ambulance; correct?

18 A. Correct.

19 Q. Okay. So you play a role in the 5150 detention of
20 subjects that you transport to a hospital; correct?

21 A. I don't -- say that I would detain them. I am
22 just the middle person to get them from Point A to Point B
23 safely.

24 Q. Well, I understand. But if the person got up and
25 said "let me go," you would -- your job would be that you

1 could not do that; correct?

2 ATTORNEY KANTER: I'll object it lacks foundation;
3 it's an incomplete hypothetical.

4 ATTORNEY FINE: I join.

5 THE WITNESS: If they want to stand up and get off
6 the gurney and leave the ambulance, I have to do whatever I
7 can to make sure that they are as safe as possible.

8 If we have to pull over, which I've done in the
9 past, I pull over, I let the person out, and then call back
10 the police department. They come back, get the person, put
11 them back in my ambulance, and then we go.

12 ATTORNEY NISENBAUM: Q. Okay. To your knowledge,
13 does a person have a right to refuse to -- a 5150?

14 ATTORNEY FINE: It's vague and ambiguous and
15 overbroad.

16 ATTORNEY KANTER: I'll join.

17 It's an incomplete hypothetical; it lacks
18 foundation; it calls for expert opinion testimony.

19 ATTORNEY FINE: Join.

20 ATTORNEY NISENBAUM: Q. Based on your experience?

21 ATTORNEY KANTER: Same objections.

22 THE WITNESS: The question again?

23 ATTORNEY NISENBAUM: Q. Does a person have a right
24 to refuse the 5150?

25 ATTORNEY KANTER: Same objections.

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

1 If you know, you can answer it. If you don't, let
2 him know.

3 ATTORNEY FINE: Same objections.

4 THE WITNESS: They don't have -- no, they can't
5 refuse the 5150.

6 ATTORNEY NISENBAUM: Q. Okay. In this case, is it
7 fair that you sedated Mr. Gutzalenko for the purpose of
8 transporting him to a hospital -- you were planning on
9 transporting him -- the purpose intended was to transport
10 him safely to a hospital pursuant to a 5150?

11 ATTORNEY FINE: Misstates prior testimony.

12 ATTORNEY KANTER: Join.

13 And it lacks foundation.

14 It's -- you're misstating the evidence.

15 ATTORNEY FINE: Join.

16 ATTORNEY NISENBAUM: I'm not.

17 ATTORNEY KANTER: You are.

18 So you can answer as best you can.

19 It's also compound.

20 But go ahead.

21 THE WITNESS: I don't think Richmond PD had an
22 idea of -- if they were going to put this person on a 5150
23 or not.

24 ATTORNEY NISENBAUM: Q. Okay. What I'm going to
25 do next -- I think, if I recall correctly, you said you did

1 not review your interview with the police?

2 A. It's been a while, but I can't really remember it.
3 Yeah.

4 Q. Okay. Right.

5 I mean, not within the last few weeks.

6 A. Correct.

7 Q. All right. Let me -- this is "Damon Richardson
8 Interview," in parentheses, "(Confidential City_1209)."
9 It's a copy of it that I made for this, so the file says
10 "copy.MP3."

11 (Playing the audio file of the designated Damon
12 Richardson Interview.)

13 ATTORNEY NISENBAUM: Okay. We just played five
14 seconds of it, and we'll make this the next exhibit.

15 3?

16 THE REPORTER: Exhibit 3.

17 ATTORNEY NISENBAUM: I almost said C.

18 (Plaintiffs' Exhibit 3 marked
19 for identification.)

20 ATTORNEY NISENBAUM: Q. All right. Do you
21 recognize your voice?

22 A. Yes.

23 Q. Okay. And like you said, it's been a long time
24 since you heard this; right?

25 A. Yes.

1 Q. All right. But this was -- you recognize this as
2 the interview that you gave at the hospital following this
3 incident involving Mr. Gutzalenko; correct?

4 A. From the brief sound bite that I heard, yes.

5 Q. Okay. All right. Do you recall Mr. Gutzalenko at
6 the scene, before you gave him Versed, saying that he
7 couldn't breathe?

8 A. I do remember that.

9 Q. Okay. And he said that more than once; correct?

10 A. I don't remember how many times he said it.

11 Q. But you knew, before you gave him Versed, that he
12 had indicated that he was having breathing problems;
13 correct?

14 A. I remember him telling me when I first got there
15 that he couldn't breathe.

16 Q. Okay. All right. And when a person can't breathe
17 or has breathing difficulties, that indicates that they
18 might have a respiratory problem that's already existing;
19 correct?

20 A. Or a cardiac issue that's causing them to have
21 respiratory problems.

22 Q. Now, you're not a doctor sufficient to diagnose
23 between the two, are you?

24 A. Not with the little information I had at hand.

25 Q. But you were aware when you gave Mr. Gutzalenko

1 Versed, that he had said he, quote, "couldn't breathe,"
2 close quote; correct?

3 ATTORNEY FINE: Asked and answered.

4 THE WITNESS: Yes.

5 ATTORNEY NISENBAUM: Q. Okay. And at the same
6 time, you were aware that one of the side effects of Versed
7 was that it could cause respiratory depression; correct?

8 A. Correct.

9 Q. Meaning, if a person had an existing respiratory
10 problem, administration of Versed could exacerbate that
11 respiratory problem, based on your training; correct?

12 A. Correct.

13 Q. Okay. So what consideration did you give that
14 when you gave Mr. Gutzalenko Versed? When you injected him
15 with it?

16 A. When I first got to his side, I tried to ask him
17 the questions. He didn't answer my questions, but when
18 Richmond PD made some statements, he was able to speak in
19 some full sentences. His respiratory effort was elevated,
20 but it didn't look like it was compromised.

21 Q. So you're saying you evaluated it. You evaluated
22 the respiratory problem that he complained of, and you
23 decided, in your medical opinion, that whatever respiratory
24 problem he said he had, it wasn't sufficient that you should
25 reconsider the use of Versed; is that right?

1 A. No, I saw his respiratory rate and quality.

2 Q. All right. Explain that.

3 A. In order for me to assess his respiratory
4 complaint, he would have had to have been compliant and let
5 me do an assessment on him.

6 Without -- with the way he was acting, the only
7 thing I could do is count his respirations and look at his
8 quality of breathing.

9 Q. Okay. And is that -- the way that you describe
10 it, you make it seem, like, doing a respiratory assessment
11 would be more comprehensive. Is that correct?

12 A. If the patient allows.

13 Q. Okay. What is involved in a respiratory
14 assessment?

15 A. Asking more questions about the respiratory
16 complaints; listening to the lung sounds; oxygen saturation;
17 capnography.

18 Q. What's capnography?

19 A. It's a measure of the gas exchange in the lungs
20 between the oxygen and the CO.

21 Q. Okay. So I'm going to go forward in your
22 interview. I'll start it at about 40 seconds or so.

23 I'm at 0:38, because that's where the cursor
24 landed. So I'll pause it and I'll ask you questions, all
25 right?

1 A. Okay.

2 (Playing designated audio file, Exhibit 3.)

3 ATTORNEY NISENBAUM: Sorry. That's actually, I
4 think, the wrong one. This is a minute long -- there are
5 two files, and I pulled up the wrong file.

6 My apologies.

7 (Pause.)

8 (Started to play the other designated audio file.)

9 ATTORNEY NISENBAUM: Okay. For the record, I am
10 playing from -- so there were two recording files. The
11 first one lasted a very short time, and then it restarted
12 with the second file. Your interview did.

13 So I'm playing now -- I think I'm playing now from
14 "Damon Richardson Continued," in parentheses, "(Confidential
15 City_1208) copy.MP3."

16 ATTORNEY FINE: Are these both Exhibit 3, or is
17 this one Exhibit 4?

18 ATTORNEY NISENBAUM: We'll make this the next
19 exhibit. Might as well. Just to have a complete record.

20 (Plaintiffs' Exhibit 4 marked
21 for identification.)

22 ATTORNEY NISENBAUM: I'm at 39 seconds. I'll hit
23 Play.

24 (Playing designated audio file, Exhibit 4.)

25 ATTORNEY NISENBAUM: Q. Okay. Does that refresh

1 your recollection that you heard the officers talk about
2 placing him -- Mr. Gutzalenko -- on a 5150?

3 A. I remember hearing one of the police officers
4 threaten to put him on a 5150, but I don't think there was
5 any discussion between the officers about placing him on a
6 5150.

7 Q. Okay. I paused it at 55 seconds -- I need to
8 check one other thing here.

9 (Pause.)

10 Okay. All right. This is part of the request for
11 production of documents. I think -- was that Exhibit A
12 [sic]?

13 THE REPORTER: No.

14 ATTORNEY NISENBAUM: B [sic]?

15 THE REPORTER: The request for production of
16 documents wasn't produced yet.

17 ATTORNEY NISENBAUM: Okay. I thought I did, but
18 maybe not.

19 We'll make this -- it's an 89-page document --

20 THE REPORTER: Oh, was that the -- the thing you
21 showed was the --

22 ATTORNEY NISENBAUM: Yes --

23 THE REPORTER: -- "Behavioral Science" --

24 ATTORNEY NISENBAUM: -- right.

25 THE REPORTER: Okay. So that is Exhibit 1.

1 ATTORNEY NISENBAUM: That whole document -- that
2 whole document was 89 pages, and I just want the whole thing
3 as that exhibit.

4 Was that number 1?

5 THE REPORTER: That's correct. You're right.

6 ATTORNEY NISENBAUM: Okay. I thought so.

7 Let me share the screen.

8 ATTORNEY NISENBAUM: Q. Okay. Are you able to
9 read the document?

10 A. Yes.

11 Q. Okay. This is your patient care report; correct?

12 A. I believe so.

13 Q. Okay. There is a Narrative section?

14 A. Yes.

15 Q. Okay. And looking in the Narrative section --
16 this is on page 22 of the document; it's page 1 of the
17 report. It says "Patient did state he could not breathe and
18 also stated 'I don't want to be on a 5150' after he heard
19 one of the Richmond PD officers state he was going to place
20 him on a 5150."

21 So that's what you said in the document that you
22 wrote; correct?

23 A. Correct.

24 Q. And when did you prepare this document?

25 A. After I cleared for -- cleared from the hospital.

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

1 Q. Okay. So events were very fresh in your mind?

2 A. Yes.

3 Q. All right. So you actually heard the officers say
4 that they were going to put Mr. Gutzalenko on a 5150;
5 correct?

6 ATTORNEY KANTER: Objection; misstates his prior
7 testimony.

8 ATTORNEY FINE: Join.

9 THE WITNESS: I heard one officer threaten to put
10 Mr. Gutzalenko on a hold.

11 ATTORNEY NISENBAUM: Q. Okay. Well, what I've --
12 reading this, it says, quote, "'I don't want to be on a
13 5150' after he heard one of the Richmond PD officers state
14 he was going to place him on a 5150."

15 Correct?

16 ATTORNEY KANTER: Are you asking if that's what it
17 says in his report?

18 ATTORNEY NISENBAUM: Q. Yes. That's what it says
19 in your report.

20 ATTORNEY KANTER: The document speaks for itself,
21 but you can answer.

22 ATTORNEY FINE: Join.

23 Asked and answered.

24 THE WITNESS: I heard one of the Richmond police
25 officers threaten to put Mr. Gutzalenko on a hold. That's

1 why this is in my report.

2 ATTORNEY NISENBAUM: Q. You don't use the word
3 "threaten." You say that "he was going to place him."

4 A. Yes.

5 Q. Correct?

6 A. That's what the officer said.

7 Q. Right.

8 He said "I'm going to place you on a 5150";
9 correct?

10 A. Correct.

11 Q. Okay. So he told him he was putting him on a
12 5150; right?

13 ATTORNEY KANTER: Objection; misstates testimony.

14 ATTORNEY FINE: Join.

15 ATTORNEY KANTER: Argumentative.

16 ATTORNEY FINE: Join.

17 THE WITNESS: He stated he was going to put him on
18 a 5150, but I don't know what pur- -- why he was going to do
19 that.

20 ATTORNEY NISENBAUM: Q. Okay. You were called to
21 the scene; correct?

22 A. Yes.

23 Q. All right. And does it say in your report why you
24 were called?

25 A. I don't believe so, no.

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

1 Q. Normally is that included?

2 A. Not in this report, but it's included in our
3 dispatch notes.

4 Q. Dispatch notes would be --

5 A. The dispatch notes would not be on a PCR. That's
6 going to be on our computer that lives in the ambulance,
7 called our MDT.

8 THE REPORTER: MBT [sic]?

9 THE WITNESS: M, as in "Mary"; D, as in "David";
10 T, as in "Tom."

11 THE REPORTER: Thank you.

12 ATTORNEY NISENBAUM: Q. Is that a part of the fire
13 department records?

14 A. I believe so, yes.

15 Q. Okay. Let me put up the fire department report.
16 This is Incident 2021-2100002763-000.

17 Do you recognize this document?

18 A. No, I do not. I don't have access to those
19 documents because that's with Richmond Fire Department.
20 Contra Costa County Fire Department dispatches AMR in Contra
21 Costa County.

22 Q. Okay. So -- so I would need Contra Costa Fire
23 Department; is that right?

24 A. Correct.

25 Q. Okay.

1 THE REPORTER: That box just gets smaller and
2 smaller.

3 ATTORNEY NISENBAUM: It's kind of frustrating.

4 ATTORNEY NISENBAUM: Q. Okay. Let me get back to
5 where I was at.

6 What was your understanding of what you were
7 responding to?

8 A. I can't remember. I do remember that we were told
9 to stage, but I can't remember what the dispatch note said
10 it was for.

11 Q. Did you talk to officers at the scene?

12 A. Some of them, yes.

13 Q. And what did they tell you?

14 ATTORNEY KANTER: Objection; vague as to time.

15 ATTORNEY FINE: Join.

16 ATTORNEY NISENBAUM: Q. As to why they had called
17 you to be there?

18 ATTORNEY KANTER: I'll just also object that it
19 lacks foundation.

20 You can answer.

21 ATTORNEY FINE: Join.

22 THE WITNESS: When I first got on scene, one of
23 the officers came to the ambulance and told us that
24 Mr. Gutzalenko had been going up and down San Pablo Avenue
25 and vandalizing stores. He told us that he was bleeding

1 from the hand, had a bruise on his head, and possibly had
2 been vomiting, and he wasn't -- he wasn't acting
3 appropriate, so to speak.

4 I can't remember the exact words. The exact
5 conversation. That's pretty much what it was.

6 ATTORNEY NISENBAUM: Q. Were they telling you that
7 they were arresting him?

8 A. No.

9 Q. Were they telling you that they thought that he
10 was having some sort of psychiatric problem that he needed
11 help with?

12 A. No.

13 Q. Did they tell you he thought -- that they thought
14 he was having a medical emergency?

15 A. No.

16 Q. Okay. You were the paramedic with the highest
17 medical authority at the scene; correct?

18 A. Correct.

19 Q. Okay. Let me stop that Share. I'm going to go to
20 one of the body cameras next.

21 This is Officer Tagorda.

22 ATTORNEY NISENBAUM: Did that make it to you?

23 THE REPORTER: I think so.

24 ATTORNEY NISENBAUM: Okay. Great.

25 So this is "Officer Tagorda Confidential

1 City_839.Confidential Copy."

2 Okay. Let me share the screen.

3 THE REPORTER: Oh, and -- sorry -- that's
4 Exhibit 5, for the record.

5 ATTORNEY NISENBAUM: Thank you.

6 (Plaintiffs' Exhibit 5 marked
7 for identification.)

8 ATTORNEY NISENBAUM: Q. I take it you don't have a
9 body cam on your person; correct?

10 A. Correct.

11 Q. All right. So this is from Officer Tagorda's body
12 cam. And as before, I'll pause it at certain points and ask
13 you questions.

14 (Playing designated video file, Exhibit 5.)

15 ATTORNEY NISENBAUM: Q. Okay. Pausing it at 1:51.
16 That was you getting out of the -- is that an
17 ambulance?

18 A. Yes.

19 Q. Okay. All right. And you have a surgical mask
20 over your face; correct?

21 A. It's an N95 mask.

22 Q. Okay. And was this back when COVID was in effect?

23 A. Correct.

24 Q. COVID protocols?

25 And that's why you have the mask on?

1 A. Yes.

2 Q. And the officer -- did you recognize him? Do you
3 know who he is?

4 A. I -- yes, I recognize him as being a Richmond
5 police officer, but I didn't know his name.

6 Q. Okay. And he was telling you that he was
7 spitting; you might want to get a spit hood. Correct?

8 A. Yes.

9 Q. All right. And now, is it important to find out,
10 you know, the basics of what happened and why you were
11 called?

12 ATTORNEY KANTER: I'll object it's calling for
13 expert opinion testimony, the way you've asked it.

14 ATTORNEY NISENBAUM: Q. Based on your training.

15 ATTORNEY KANTER: Same objection.

16 Because this is relating to a particular incident.

17 ATTORNEY NISENBAUM: Q. In general, are you
18 trained that you should -- when you come to a scene that the
19 police have called you to, that you should try to get a
20 summary of -- a summation -- a short synopsis of what
21 happened while you were called?

22 ATTORNEY KANTER: Same objections.

23 But you can answer if you're able.

24 THE WITNESS: Yes, we get a brief synopsis of what
25 happened -- what took place before we got there.

1 ATTORNEY NISENBAUM: Q. And does that typically
2 include why you were called?

3 ATTORNEY KANTER: I'll object it's an incomplete
4 hypothetical; vague; ambiguous; and overly broad.

5 You can answer if you're able.

6 THE WITNESS: No, not all the time.

7 ATTORNEY NISENBAUM: Q. Okay. Well, let's go
8 to...

9 (Pause.)

10 Okay. What does the term "5-1-5-0" mean?

11 ATTORNEY KANTER: Objection; lacks foundation;
12 calls for speculation; incomplete hypothetical.

13 ATTORNEY FINE: Join.

14 Asked and answered.

15 THE WITNESS: "5150" is a term for the
16 psychological hold.

17 ATTORNEY NISENBAUM: Q. So 5-1-5-0 -- do you use
18 that terminology sometimes in the field when you talk about
19 doing a 5150 on someone?

20 ATTORNEY KANTER: Objection; lacks foundation.

21 He doesn't do 5150s. He doesn't place them, as he
22 already testified.

23 ATTORNEY NISENBAUM: Q. When you're having a
24 conversation or a discussion with someone about whether a
25 5150 is being effected.

1 A. Richmond Police and other law enforcement agencies
2 will tell me that they will or will not be placing a subject
3 on a 5150.

4 Q. Okay. I asked, though, specifically. When you
5 talk out in the field, do you sometimes refer to a 5150 as
6 "5-1-5-0"?

7 A. Not me personally.

8 Q. Okay. All right. I'm going to start -- continue
9 playing at 1:51.

10 (Playing designated video file, Exhibit 5.)

11 ATTORNEY NISENBAUM: Q. All right. We're at 2:00
12 minutes that I just paused at.

13 That was you who asked why did you guys get called
14 out; correct?

15 A. Correct.

16 Q. And the officer was responding to that; correct?

17 A. Correct.

18 Q. Okay. Continuing at 2:00 minutes.

19 (Playing designated video file, Exhibit 5.)

20 ATTORNEY NISENBAUM: Q. Go back. I'm not sure if
21 I heard everything there.

22 I'll go to 1:56; hit Play.

23 (Playing designated video file, Exhibit 5.)

24 ATTORNEY NISENBAUM: Q. Okay. Pausing at 2:03.

25 He said he's "obviously intoxicated"; correct?

1 ATTORNEY FINE: Misstates the video.

2 ATTORNEY KANTER: I'll join.

3 THE WITNESS: I did not state that.

4 ATTORNEY NISENBAUM: Q. Not you. The officer said
5 he's "obviously intoxicated"; correct?

6 ATTORNEY FINE: Same ob- -- same ob- --

7 ATTORNEY KANTER: Calls -- yeah, same objections.

8 And, I mean, the video speaks for itself. If
9 you're asking him if it refreshes his memory, that's one
10 thing. But you're just asking him to testify as to what
11 this video is audibly referencing.

12 ATTORNEY FINE: Join.

13 ATTORNEY NISENBAUM: All right, I can't tell
14 you -- I had a trial with Judge Patel where a lawyer kept
15 making that objection, and she went through the roof.

16 In any event.

17 ATTORNEY NISENBAUM: Q. That's what the officer
18 told you; correct?

19 ATTORNEY FINE: Same objections.

20 ATTORNEY KANTER: Yeah, same objections; and the
21 question is vague as it's been asked now.

22 You can answer if you're able.

23 ATTORNEY NISENBAUM: Q. "Obviously intoxicated."
24 The officer told you that; correct?

25 ATTORNEY FINE: Same objections.

1 ATTORNEY KANTER: Join.

2 THE WITNESS: Correct, that's what the officer
3 said.

4 ATTORNEY NISENBAUM: Q. Okay. All right. And
5 that's important information to have when you're treating a
6 person; correct?

7 A. Yes.

8 Q. Okay. All right. Continuing at 2:03.

9 (Playing designated video file, Exhibit 5.)

10 ATTORNEY NISENBAUM: Q. Pausing at 2:20.

11 Do you know who the paramedic is that the officer
12 is talking to now?

13 A. That is Dan Burnett, and at the time he was not a
14 paramedic.

15 Q. Okay. What was he?

16 A. He was an EMT Basic.

17 Q. I see.

18 All right. Continuing at 2:20.

19 (Playing designated video file, Exhibit 5.)

20 ATTORNEY NISENBAUM: Q. Pausing at 3:36.

21 Is that Burnett who's got the stretcher?

22 A. Yes.

23 Q. Okay. Continuing at 3:36.

24 Well, let me ask you this.

25 Do you know why the stretcher is being brought to

1 where the -- to where Mr. Gutzalenko is located?

2 A. In case we needed to take the individual to the
3 hospital.

4 Q. So is he being taken only as a precaution at this
5 point?

6 ATTORNEY KANTER: Objection; it's vague and
7 ambiguous; it's overly broad.

8 I'm not sure I understand the question myself.
9 But if you understand it, feel free.

10 ATTORNEY NISENBAUM: Q. Let me ask you a different
11 question.

12 Had the decision already been made to take
13 Mr. Gutzalenko to the hospital at this point when the
14 stretcher is being brought to him?

15 A. No.

16 Q. Okay. All right. Did you stay with
17 Mr. Gutzalenko during this time period?

18 ATTORNEY FINE: Vague.

19 ATTORNEY NISENBAUM: Q. Do you know where you
20 were?

21 A. In the video shot here? I believe I was in front
22 of Dan Burnett.

23 Q. Okay. All right. And do you oftentimes take the
24 stretcher -- remove the stretcher merely as a precaution
25 just in case a person might have to go to a hospital?

1 A. Yes.

2 Q. Okay. Continuing at 3:36.

3 (Playing designated video file, Exhibit 5.)

4 ATTORNEY NISENBAUM: Q. 4:33.

5 Whose voice was that saying, I think, "Seems to be
6 a 5150"?

7 ATTORNEY FINE: Calls for speculation.

8 ATTORNEY KANTER: Calls for -- yeah. Join.

9 Lacks foundation.

10 THE WITNESS: I don't know who said that.

11 ATTORNEY NISENBAUM: Q. It's not you?

12 A. No.

13 Q. Play it again at 4:10.

14 (Playing designated video file, Exhibit 5.)

15 ATTORNEY NISENBAUM: Q. Okay. Did you hear
16 that -- do you recall hearing them say that at the scene now
17 that you've watched it?

18 A. I do not -- no, I don't remember hearing that
19 particular part.

20 Q. You understood that the terminology used there,
21 "5-1-5-0," referred to a 5150. You understand that now,
22 watching it; correct?

23 A. Correct.

24 Q. Okay.

25 (Playing designated video file, Exhibit 5.)

1 ATTORNEY NISENBAUM: Q. Okay. Now, by the way,
2 Mr. Gutzalenko was able to tell you his name; correct?

3 A. I don't remember him telling me anything other
4 than "I'm short of breath." And he might have told me his
5 first name, but not his last name.

6 Q. Well, looking at your -- let me pull up your
7 report.

8 (Pause.)

9 Do you recall referring to him as "Mr. Ivan"?

10 A. I do not remember that.

11 Q. Okay.

12 All right. And I'm just going to read from it as
13 opposed to change what's on the screen.

14 But this is from page 66 of your coroner's inquest
15 testimony, starting at line 15.

16 "Answer. So after that, I came up. I tried to
17 establish his alert and oriented status by asking him his
18 name, city, person, place, time, and event, basically, and
19 he didn't really answer me. I believe he might have told me
20 that his name was Ivan."

21 Does that refresh your recollection that he told
22 you his name was Ivan?

23 A. It does not refresh my recollection at this time.

24 Q. Okay. All right. I'll play from your interview,
25 then.

1 I tried to do it the shorter way.

2 So this is -- I forget the exhibit number, but
3 your interview ending in the numbers _1208.

4 I'm going to go to -- call it 50 seconds.

5 52 seconds.

6 Play it.

7 (Playing designated audio file, Exhibit 4.)

8 ATTORNEY NISENBAUM: Q. Let me actually go back a
9 little more at 43 seconds.

10 (Playing designated audio file, Exhibit 4.)

11 ATTORNEY NISENBAUM: Q. You know what? I played
12 from the wrong file again.

13 Let me go -- this is the other file; the shorter
14 one; the one ending _1209. I apologize for that.

15 (Started to play audio file, Exhibit 3.)

16 ATTORNEY NISENBAUM: Q. Start at 53 seconds.

17 (Playing designated audio file, Exhibit 3.)

18 ATTORNEY NISENBAUM: Q. Okay. Pausing at 1:13.

19 That was your voice that said "He was able to tell
20 me his name, but he didn't really want to answer any
21 questions" -- "any other questions after that."

22 Correct?

23 A. Correct.

24 Q. Okay. Does that refresh your recollection that
25 Mr. Gutzalenko was able to tell you his name?

1 A. Yeah, but I'm still fuzzy on the events because
2 they happened four years ago.

3 Q. I get that. I understand.

4 But my question to you is when you gave this
5 interview, it wasn't four years ago; it was right after.
6 Right?

7 A. Correct.

8 Q. Okay. So it's fair to say that if that's what you
9 said then, then that's what happened.

10 ATTORNEY KANTER: Well, I'll object it's
11 argumentative.

12 You can answer.

13 THE WITNESS: Correct.

14 ATTORNEY NISENBAUM: Q. All right. So he was able
15 to tell you his name, but he didn't appear to want to have
16 any further discussion than that; correct?

17 A. With me.

18 Q. With you.

19 All right. Go back to the body cam.

20 We're at 4:47. Let me just hit Play.

21 (Playing designated video file, Exhibit 5.)

22 ATTORNEY NISENBAUM: Q. 5:09.

23 It sounded like the officers were telling Ivan --
24 and they were using his name -- "You're going to get tased,
25 Ivan" -- saying things like that; and he was responding as

1 if he knew what they were saying. Correct?

2 ATTORNEY KANTER: I'll just object it lacks
3 foundation; calls for speculation.

4 But you can answer.

5 ATTORNEY FINE: Join.

6 THE WITNESS: Correct.

7 ATTORNEY NISENBAUM: Q. He was saying "No,"
8 fearful that he was going to be tased; right? That's what
9 it appeared to be.

10 ATTORNEY KANTER: Same objections.

11 ATTORNEY FINE: Join.

12 THE WITNESS: Correct.

13 ATTORNEY NISENBAUM: Q. Thank you.

14 5:09; continuing.

15 (Started to play video file, Exhibit 5.)

16 ATTORNEY NISENBAUM: Q. I take it you don't know
17 which officer's shin is across a portion of Mr. Gutzalenko's
18 torso, do you?

19 A. I do not know his name.

20 Q. Okay. And I take it you weren't taking notes
21 about how the officers were positioned with respect to
22 Mr. Gutzalenko?

23 A. No, not while I was wrapping his hand.

24 Q. Right.

25 And you weren't really paying attention to that, I

1 take it?

2 A. Not to what the officers were currently doing
3 then.

4 Q. Okay. At 5:11; continue.

5 (Playing designated video file, Exhibit 5.)

6 ATTORNEY NISENBAUM: Q. All right. 5:38.

7 There was a voice that said "What's the best way
8 we can do this, guys?" And then your voice that said "I'm
9 going to get some Versed drawn up."

10 Did you hear that?

11 A. Yes.

12 Q. Okay. It sounds -- if I am interpreting this
13 correctly, it sounds like there is some, basically, teamwork
14 going on between you and the officers; correct?

15 ATTORNEY KANTER: Objection; argumentative; calls
16 for speculation; lacks foundation.

17 ATTORNEY FINE: Vague and ambiguous; overbroad.
18 Join.

19 ATTORNEY KANTER: Join.

20 THE WITNESS: They were going to help assist me to
21 get him on the gurney.

22 ATTORNEY NISENBAUM: Q. Okay. Let's go back.
23 5:26.

24 (Playing designated video file, Exhibit 5.)

25 ATTORNEY NISENBAUM: Q. I'm trying to figure out

1 what he said.

2 "What's the best way we can do this?" Do you know
3 what he said?

4 A. Um --

5 ATTORNEY KANTER: Are you asking him what his
6 recollection was, or are you asking what this video is now
7 saying?

8 ATTORNEY NISENBAUM: Q. Like, what your
9 recollection is based after, hopefully, having your
10 recollection jogged by the video.

11 A. I don't remember hearing that aspect -- that
12 statement.

13 Q. All right. Do you know what he said as we sit
14 here and listen to it?

15 A. It's kind of not a very good quality audio on my
16 end, so I can't really answer that.

17 Q. But it was your voice that said you're going to
18 go -- you're going to get some Versed drawn up; correct?

19 A. Correct.

20 Q. Okay. And why were you drawing up Versed?

21 A. For my safety, basically.

22 Q. I see.

23 Now, he hadn't been handcuffed yet; right?

24 A. Not that I remember at that point, no.

25 Q. Okay. Continuing at 5:37.

1 (Playing designated video file, Exhibit 5.)

2 ATTORNEY NISENBAUM: Q. Pausing at 6:28.

3 Do the police sometimes help you facilitate an
4 injection -- a sedative when you use a -- I'm sorry -- when
5 you use a chemical restraint in the field?

6 ATTORNEY KANTER: I'll object it's vague and
7 ambiguous; it's an incomplete hypothetical.

8 ATTORNEY FINE: Overbroad.

9 Join.

10 ATTORNEY KANTER: Join.

11 THE WITNESS: No, the decision is always mine.
12 They do not assist with that unless it's restraining this
13 person so I can inject him.

14 ATTORNEY NISENBAUM: Q. Okay. So they will assist
15 to the extent that they'll hold a person down or otherwise
16 restrain a person for you to give them the injection; is
17 that right?

18 ATTORNEY FINE: Incomplete hypothetical.

19 ATTORNEY KANTER: Join.

20 And the same objections as before.

21 ATTORNEY FINE: Join.

22 THE WITNESS: Correct.

23 ATTORNEY NISENBAUM: Q. I want to go back.

24 We're here -- go back to 5:20. I'm going to hit
25 Play.

1 (Playing designated video file, Exhibit 5.)

2 ATTORNEY NISENBAUM: Q. "What's the best way we're
3 going to do this?" That was one of the officers at the
4 scene who said it?

5 ATTORNEY FINE: Calls for speculation.

6 ATTORNEY KANTER: Join.

7 THE WITNESS: I can't remember.

8 ATTORNEY NISENBAUM: Q. Okay. Your response was
9 you're going to get Versed drawn up; correct?

10 ATTORNEY FINE: Lacks foundation.

11 ATTORNEY NISENBAUM: Q. In that part; right?

12 ATTORNEY FINE: My apologies.

13 Lacks foundation.

14 THE WITNESS: Correct.

15 ATTORNEY NISENBAUM: Q. Okay.

16 (Started to play video file, Exhibit 5.)

17 ATTORNEY NISENBAUM: Q. At that time you were
18 discussing -- you understood that that was a discussion:

19 "What's the best way we're going to do this?"

20 You know.

21 "Well, we're going to give him some Versed."

22 You were talking about transporting him -- how to
23 get him transported; correct?

24 ATTORNEY KANTER: Objection; argumentative.

25 ATTORNEY NISENBAUM: Q. The officer said "What's

1 the best way we're going to do this?"

2 The "this" that he was referring to was getting
3 Mr. Gutzalenko transported, to your understanding; correct?

4 ATTORNEY FINE: Calls for speculation.

5 He testified he doesn't remember anyone saying
6 that.

7 THE WITNESS: Based on the video, I think it was
8 not the transport but getting Gutzalenko on the gurney.

9 ATTORNEY NISENBAUM: Q. Okay.

10 Okay. I'm going to go back to your report.

11 ATTORNEY NISENBAUM: And I forget what exhibit
12 number this was.

13 THE REPORTER: Well, is that part of Exhibit 1?

14 ATTORNEY NISENBAUM: Yes. It is.

15 THE REPORTER: Then it's Exhibit 1.

16 ATTORNEY NISENBAUM: Okay. Great.

17 ATTORNEY NISENBAUM: Q. We're on page 23 -- I'm
18 sorry -- page 22 of your -- of Exhibit 1.

19 And I'm reading from your narrative.

20 "PT" -- it's okay if I use the word patient
21 instead of PT; right?

22 A. Are you asking me or the other counsel?

23 Q. I'm asking you.

24 We know that "PT" means patient; right?

25 A. Correct.

1 Q. Okay. "Patient did state he could not breathe,
2 and also stated 'I don't want to be on a 5150' after he
3 heard one of the Richmond PD officers state he was going to
4 place him on a 5150. While attempting to place a sterile
5 dressing on the patient's right hand, the patient kept
6 trying to keep his hand away from EMS and also grab at the
7 dressing and grab the hand of Medic Richardson, who was
8 attempting to place the dressing."

9 Is that you writing about yourself in the third
10 person?

11 A. Yes.

12 Q. Okay. It continues.

13 "It was determined that patient was too combative
14 to safely be placed on the gurney by first responders
15 without being chemically restrained."

16 He was going to be placed on the gurney to be
17 transported; correct?

18 ATTORNEY KANTER: I'll just object it lacks
19 foundation.

20 ATTORNEY FINE: Join.

21 ATTORNEY KANTER: You can answer it.

22 THE WITNESS: I'm sorry?

23 ATTORNEY KANTER: You can answer, if you can.

24 THE WITNESS: Yes.

25 ATTORNEY NISENBAUM: Q. The answer was "yes"?

1 A. The answer was "yes."

2 Q. Okay. And he was going to be transported for
3 purposes of a 5150; correct?

4 ATTORNEY KANTER: Objection; that -- it misstates
5 prior testimony; lacks foundation; calls for speculation.

6 ATTORNEY FINE: Join.

7 THE WITNESS: I don't think the 5150 had been
8 established at this time.

9 ATTORNEY NISENBAUM: Q. Okay. So why was he going
10 to be transported?

11 A. In my opinion he was -- needed medical attention.

12 Q. What medical attention did he need?

13 A. I can't really answer that because I couldn't get
14 a full assessment.

15 Q. Okay. Well, a person with a cut on their hand
16 doesn't typically require transport by an ambulance, do
17 they? Unless it's, you know, severe, severe bleeding.

18 ATTORNEY FINE: Incomplete hypothetical.

19 ATTORNEY KANTER: And I'll join.

20 You've got a lot more going on than that, and --
21 anyway, you can answer.

22 THE WITNESS: Correct, a minor laceration doesn't
23 need an ambulance.

24 ATTORNEY NISENBAUM: Q. Okay. One of the -- one
25 of the reasons he was being -- that you were going to

1 transport him was for purposes of a 5150; correct?

2 ATTORNEY KANTER: Objection; misstates prior
3 testimony; lacks foundation; calls for speculation.

4 ATTORNEY FINE: Join.

5 THE WITNESS: I was not going to -- I was going to
6 transport him to get medical attention.

7 ATTORNEY NISENBAUM: Q. That medical attention
8 included evaluation for a 5150; correct?

9 ATTORNEY KANTER: Objection; misstates prior
10 testimony; vague and ambiguous; overly broad; incomplete
11 hypothetical.

12 He's already testified he doesn't place patients
13 on a 5150.

14 You can answer.

15 ATTORNEY FINE: Join.

16 ATTORNEY NISENBAUM: Q. I understand, but you
17 transport people for -- who have been 5150ed, or for further
18 evaluation for a 5150.

19 You do do that; correct?

20 A. I transport people who have been already placed on
21 a 5150.

22 Q. Okay.

23 ATTORNEY FINE: Hey, Ben? Can I persuade you to
24 take a five-minute break? Like, at most, five minutes?

25 ATTORNEY NISENBAUM: Sure.

1 And I do, actually, have to hurry it up, though.
2 I've got to get my daughter. I have to leave in about an
3 hour. So.

4 ATTORNEY FINE: Okay.

5 ATTORNEY NISENBAUM: I thought this would go
6 faster, but.

7 ATTORNEY FINE: So back at 11:55, yeah?

8 ATTORNEY NISENBAUM: Sure.

9 ATTORNEY FINE: Thank you very much. I appreciate
10 it.

11 (Recess: 11:51 A.M. to 11:56 A.M.)

12 ATTORNEY NISENBAUM: Q. I'm going to share my
13 screen, and I'm sharing from the coroner's inquest
14 transcript, a section of the testimony from Officer Tran.

15 And this is from page 46, line 15.

16 "Question. Did you indicate at some point, you
17 or Officer Hall, that you would 5150 him?

18 "Answer. During that point, no. When AMR got
19 there and he -- I thought he was being
20 cooperative. So there is no point to place
21 him on a mandatory psychiatric hold if he's
22 willing to get the help that he needs.

23 "Question. All right.

24 "Answer. Once AMR got there and he was
25 uncooperative, and it was very obvious

1 that he was not cooperative with receiving
2 the aid that he needed, I was not
3 comfortable with letting Mr. Ivan just
4 walk away in the condition that he is. In
5 my belief, when your skin is blue and
6 purple, when your eyes are bloodshot red,
7 when you have cuts on your body and you're
8 bleeding profusely, you need medical help.
9 And if you are unable to care for
10 yourself, my duty is to care for you. At
11 that point when Mr. Ivan decided not to
12 cooperate with AMR, I agreed with Officer
13 Hall that we needed to place Mr. Ivan on a
14 psychiatric hold."

15 Now, did the officers tell you that they were
16 putting him on a psychiatric hold?

17 ATTORNEY KANTER: Objection; it's been asked and
18 answered many times.

19 You can answer him again.

20 ATTORNEY FINE: Join.

21 THE WITNESS: They did not tell me he was going to
22 be placed on a hold.

23 ATTORNEY NISENBAUM: Q. Okay.

24 Okay. I'm going to stop the Share.

25 When you heard the words "5-1-5-0," you didn't

1 think that that was telling you that they were -- that he
2 was being put on a 5150?

3 ATTORNEY KANTER: Objection; lacks foundation;
4 it's argumentative.

5 ATTORNEY FINE: Join.

6 Asked and answered.

7 ATTORNEY KANTER: Join.

8 THE WITNESS: I didn't know what their purposes
9 were at that point.

10 ATTORNEY NISENBAUM: Q. So when you heard the
11 words "5-1-5-0," you thought maybe it's just in jest or
12 maybe it's a ruse?

13 ATTORNEY KANTER: Objection; this -- it's an
14 argumentative -- we -- we're -- lacks foundation.

15 ATTORNEY FINE: Join.

16 And argumentative.

17 THE WITNESS: Say the question again?

18 ATTORNEY NISENBAUM: Q. When you heard them say
19 "5-1-5-0," and you responded saying you were going to draw
20 up some Versed -- it was all for the purpose of sedating him
21 to transport him while he was under a 5150, wasn't it?

22 ATTORNEY KANTER: Misstates testimony; misstates
23 the evidence.

24 You're just being argumentative at this point.

25 It lacks foundation.

1 You're asking about a situation that didn't occur
2 to his knowledge.

3 ATTORNEY NISENBAUM: It occurred because we saw it
4 on video. He said "5-1-5-0," and you responded by saying
5 you're going to draw up some Versed.

6 ATTORNEY KANTER: No, that's --

7 ATTORNEY NISENBAUM: Q. That's correct, isn't it?

8 ATTORNEY KANTER: -- that's not what we just
9 heard; that's not what the video depicts. So I'll just
10 object it lacks foundation.

11 You can answer.

12 ATTORNEY FINE: Join.

13 THE WITNESS: The reason why I wanted to draw up
14 some Versed and give it to Ivan was for my own safety
15 once -- to get him on the gurney and into the back of the
16 ambulance.

17 ATTORNEY NISENBAUM: Q. Okay. During transport.
18 And he was being transported, again, on a 5150;
19 correct?

20 ATTORNEY KANTER: No -- objection; argumentative;
21 lacks foundation; it's been asked and answered; and it
22 misstates his prior testimony.

23 ATTORNEY FINE: Join.

24 THE WITNESS: Not correct. He has not been placed
25 on a hold.

1 ATTORNEY NISENBAUM: Q. So when Officer Tran
2 testified at the coroner's inquest that he was going to put
3 him on a 5150; that he had decided -- he agreed with Officer
4 Hall that they needed to place Mr. Ivan on a psychiatric
5 hold -- are you saying that was never communicated to you?

6 ATTORNEY FINE: Asked and answered.

7 ATTORNEY KANTER: Join.

8 THE WITNESS: I remember hearing the officers
9 discuss placing him on a hold, but they were discussing it
10 among themselves; not with me.

11 ATTORNEY NISENBAUM: Q. Well, you knew that he was
12 in custody when you -- when you plunged the syringe into --
13 what was it, his deltoid?

14 A. Yes, I believe so.

15 Q. When you plunged the syringe into Mr. Gutzalenko's
16 deltoid, you knew that he was in custody; correct?

17 ATTORNEY KANTER: Objection; lacks foundation;
18 calls for speculation.

19 Are you asking whether he knew that he was
20 handcuffed?

21 ATTORNEY NISENBAUM: Q. You knew that he was being
22 detained; correct?

23 ATTORNEY KANTER: Same objections. It's vague and
24 ambiguous; lacks foundation; it calls for speculation.

25 ATTORNEY FINE: Join.

1 THE WITNESS: I knew that he was in handcuffs
2 because he was being uncooperative and combative.

3 ATTORNEY NISENBAUM: Q. Okay. And you knew that
4 your job was to transport him to the hospital while he was
5 being -- while he was in custody; correct?

6 ATTORNEY KANTER: Lacks foundation; calls for
7 speculation; it's an incomplete hypothetical because it
8 didn't happen that way.

9 ATTORNEY FINE: And join.

10 THE WITNESS: I didn't know what the intention of
11 the officers were at that point.

12 ATTORNEY NISENBAUM: Q. So even when they said
13 5150, you didn't know that their intention was to 5150 him?

14 ATTORNEY KANTER: Objection; argumentative; calls
15 for speculation.

16 ATTORNEY NISENBAUM: Sorry. You're right. I
17 actually misspoke.

18 ATTORNEY NISENBAUM: Q. When the officers said
19 "5-1-5-0," you didn't understand that their intention was to
20 5150 him?

21 ATTORNEY KANTER: Objection; calls for
22 speculation; lacks foundation.

23 THE WITNESS: Police officers discuss 5150ing
24 people all the time. Sometimes it happens and sometimes it
25 doesn't.

1 ATTORNEY NISENBAUM: Q. Well, could you just give
2 a person Versed and then not transport them?

3 A. No, I cannot.

4 Q. Okay. So -- he's in handcuffs, so you know that
5 he's not free to leave -- I take it you understood that?

6 ATTORNEY KANTER: I'll object it calls for
7 speculation, but you can answer.

8 THE WITNESS: I don't think he had the capacity to
9 leave under his own will even if he was [sic] handcuffed.

10 ATTORNEY NISENBAUM: Q. Even if he wasn't
11 handcuffed?

12 A. Correct.

13 Q. Okay. Again, you've interacted with police and
14 subjects they have arrested that you've provided some form
15 of treatment for; correct? Many, many times.

16 A. Yes.

17 Q. Okay. And this was one of those times; correct?

18 A. Yes.

19 Q. So you have an understanding that when a person is
20 in handcuffs and the police are -- appear to be in the
21 process of detaining him -- in this case -- well, strike
22 that.

23 In this case, the police didn't just handcuff
24 Mr. Gutzalenko; they restrained him on the ground for a
25 significant period of time. Correct?

1 ATTORNEY KANTER: Objection; argumentative; calls
2 for speculation; lacks foundation.

3 ATTORNEY FINE: Join.

4 Misstates the video.

5 ATTORNEY NISENBAUM: Q. In your presence they did
6 that; correct?

7 ATTORNEY KANTER: Same objections.

8 You can answer.

9 ATTORNEY FINE: Join.

10 THE WITNESS: Yes.

11 ATTORNEY NISENBAUM: Q. Okay. So you -- you know
12 that that doesn't happen unless a person is being forcibly
13 detained in some manner; correct?

14 ATTORNEY KANTER: Objection; calls for
15 speculation; lacks foundation; it's argumentative.

16 You can answer if you're able.

17 ATTORNEY FINE: Join.

18 THE WITNESS: I'm not a police officer, and I
19 don't know what it constitutes for a police officer to put
20 somebody in handcuffs.

21 ATTORNEY NISENBAUM: Q. Okay. But you know that
22 that person is not free to leave.

23 ATTORNEY KANTER: Same objections.

24 ATTORNEY FINE: Join.

25 THE WITNESS: Until the police officer finishes

1 their investigation, yes.

2 ATTORNEY NISENBAUM: Q. Okay. And that includes
3 when the person is in your -- is in handcuffs in the back of
4 your paramedic -- in the back of your ambulance, and you're
5 transporting them to the hospital, and you're told that
6 they're in custody, then you know that they're not free to
7 leave then either.

8 We talked about that; right?

9 ATTORNEY KANTER: Objection; vague and ambiguous;
10 incomplete hypothetical; calls for a legal conclusion; calls
11 for speculation; lacks foundation.

12 THE WITNESS: In the back of the ambulance
13 patients aren't allowed to be handcuffed.

14 ATTORNEY NISENBAUM: Q. Okay.

15 A. We have to use our own Velcro restraints.

16 Q. Okay. But they're -- you understand that they are
17 in custody of the police when that -- when they are;
18 correct?

19 ATTORNEY KANTER: Objection; incomplete
20 hypothetical; vague and ambiguous; overly broad; calls for
21 speculation; lacks foundation.

22 You can answer.

23 ATTORNEY FINE: Join.

24 THE WITNESS: So if the police officers tell me
25 that this person is in custody, sometimes yes -- if a person

1 is in custody, the police officers usually tell me that.

2 ATTORNEY NISENBAUM: Q. Okay. All right.

3 In this case, Mr. Gutzalenko never made it into
4 the ambulance; correct?

5 ATTORNEY KANTER: Objection; lacks foundation.

6 ATTORNEY NISENBAUM: Q. Well, he never made it
7 into your ambulance; correct?

8 ATTORNEY KANTER: Same objection.

9 ATTORNEY FINE: Join.

10 THE WITNESS: He did make it in my ambulance, and
11 I transported him to the hospital.

12 ATTORNEY NISENBAUM: Q. I'm sorry. That is
13 correct.

14 That was after CPR was being done on him; correct?

15 A. Correct.

16 Q. All right. Now, reading your coroner's inquest
17 testimony, you testified at the coroner's inquest that you
18 didn't notice that Mr. Gutzalenko had stopped breathing
19 until after you got him onto the gurney.

20 Do you recall testifying to that?

21 A. Yes.

22 Q. In reality, that's inaccurate; correct?

23 ATTORNEY KANTER: Objection; argumentative; lacks
24 foundation; calls for speculation.

25 ATTORNEY FINE: Join.

1 THE WITNESS: I can't remember.

2 ATTORNEY NISENBAUM: Q. Okay. Well, you
3 remembered at the time you gave your interview -- I'll go
4 back to your interview.

5 (Pause.)

6 Again, I forget the exhibit number, but it ends in
7 the numbers _1208.

8 THE REPORTER: That could be the first one -- I
9 think _12- -- oh, wait. _1208 is the second file.

10 ATTORNEY NISENBAUM: Right. Okay.

11 Okay. I'm going to go forward to 4:15 or so.
12 4:14.

13 (Playing designated audio file, Exhibit 4.)

14 ATTORNEY NISENBAUM: Q. Pausing at 5:45.

15 Does that refresh your recollection as to when it
16 was that you noticed that Mr. Gutzalenko had stopped
17 breathing and had no pulses?

18 A. Yes.

19 Q. Okay. It was almost immediately after giving him
20 the Versed; correct?

21 ATTORNEY KANTER: Objection; argumentative.

22 ATTORNEY FINE: Join.

23 THE WITNESS: It was after I gave him Versed.

24 ATTORNEY NISENBAUM: Q. Right.

25 And before he was put on the gurney; correct?

1 ATTORNEY KANTER: I'll just object it calls for
2 speculation; lacks foundation, but you can answer.

3 ATTORNEY FINE: Join.

4 THE WITNESS: According to what I said there, yes.

5 ATTORNEY NISENBAUM: Q. Okay. Well, we also have
6 video of it, so let me go back to Officer Tagorda and his
7 body cam.

8 And again, I apologize. I don't recall the
9 exhibit.

10 THE REPORTER: Exhibit 5.

11 ATTORNEY NISENBAUM: Okay. So we're back to
12 Exhibit 5.

13 Share.

14 (Pause.)

15 So we're at 5:38; let me go to 7:30 or so.

16 7:22, because that's where the cursor fell.

17 (Playing designated video file, Exhibit 5.)

18 ATTORNEY NISENBAUM: Q. Okay. Pausing now at
19 7:38.

20 That's you that's coming to view of the camera?

21 A. On the left side, yes.

22 Q. Okay. And you had gone to the ambulance and
23 gotten a syringe of Versed; correct?

24 A. Correct.

25 Q. All right. Now, before you injected

1 Mr. Gutzalenko with Versed, what did you do to make sure
2 that you didn't accidentally hit a vein?

3 A. Nothing.

4 Q. Okay.

5 A. Made sure that I had a -- I chose a larger-type
6 muscle of the delt.

7 (Reporter clarification.)

8 THE WITNESS: -- a large muscle.

9 ATTORNEY NISENBAUM: Q. Do veins run through
10 muscle?

11 A. Yes.

12 Q. Okay. And of course I know you're wearing
13 glasses, but they're not, like, specially enhanced with any
14 sort of X-ray vision or other thing that would allow you to
15 see where veins are and where they're not; right?

16 A. Not yet, no, they are not special.

17 Q. Maybe eventually.

18 But right now, the only technique that you know of
19 to avoid actually accidentally injecting into a vein, is to
20 aspirate the syringe; correct?

21 ATTORNEY KANTER: Objection; misstates prior
22 testimony.

23 THE WITNESS: Correct.

24 ATTORNEY NISENBAUM: Q. Okay. Continuing at 7:38.

25 (Playing designated video file, Exhibit 5.)

1 ATTORNEY NISENBAUM: Q. Okay. We're pausing now
2 at 7:42.

3 I take it, again, you don't know the officer's
4 name whose hand your hand is close to?

5 A. I do not know his name.

6 Q. Okay. But that officer pulled Mr. Gutzalenko's --
7 the collar of his shirt back to open up the area where you
8 were going to inject him; correct?

9 A. Yes --

10 ATTORNEY KANTER: Are you asking if that's what
11 the video shows, or what he remembers?

12 ATTORNEY NISENBAUM: Q. I asked you what happened.
13 Is that what happened?

14 ATTORNEY KANTER: Based upon this video or what he
15 remembers?

16 ATTORNEY NISENBAUM: Either way.

17 ATTORNEY KANTER: Well, then, ask one of them
18 because it's compound.

19 ATTORNEY NISENBAUM: Q. I'm asking you what
20 happened. If you don't know, then I'll ask you a different
21 question.

22 A. As I was getting ready to inject Gutzalenko with
23 the Versed, I grabbed the collar of his shirt, pulled it
24 down, then it popped back up over the side that I was going
25 to inject him. That's when this particular officer reached

1 for the collar and pulled it down; holding it down.

2 Q. Okay. And that was to facilitate the injection of
3 the Versed; correct?

4 ATTORNEY FINE: Vague and ambiguous; overbroad;
5 calls for speculation.

6 ATTORNEY KANTER: Join.

7 THE WITNESS: Correct.

8 ATTORNEY NISENBAUM: Q. Okay. All right. And are
9 you right or left handed?

10 A. Right handed.

11 Q. And the syringe is in your right hand?

12 A. Yes.

13 Q. Now, at this point Mr. Gutzalenko was alive;
14 correct?

15 A. Yes.

16 Q. And he didn't appear to be violently resisting at
17 this point; correct?

18 A. Correct.

19 Q. Okay. So why did you give him Versed at all at
20 this time?

21 A. Because when you transfer a patient onto a gurney,
22 you have to take off the handcuffs, and that's one of the
23 most dangerous parts when you have a combative patient.

24 So if you have Versed on board, it can calm the
25 patient down, making it safer for everybody involved in that

1 situation.

2 Q. If you accidentally give them too much Versed, you
3 could also kill the patient; right?

4 ATTORNEY KANTER: Well, objection; incomplete
5 hypothetical; calls for speculation; calls for expert
6 opinion testimony.

7 ATTORNEY FINE: Join.

8 THE WITNESS: Correct.

9 ATTORNEY NISENBAUM: Q. Okay. So --

10 ATTORNEY NISENBAUM: All right. I have about a
11 half an hour before I have to leave and get my daughter. I
12 can come back here, and we can finish this. We'll have to
13 take about an hour or so break in between, if you guys are
14 okay with that. It's like a lunch break.

15 But I've got a half an hour before I have to
16 leave. I just want to tell you guys that.

17 ATTORNEY FINE: How much more time do you think
18 you have?

19 ATTORNEY NISENBAUM: Well -- I have more than half
20 an hour. I mean, I don't have that much longer, but I can't
21 leave my daughter at school.

22 ATTORNEY FINE: I've probably got ten minutes as
23 well. So I guess it's up to Scott and his client.

24 ATTORNEY KANTER: So you want to take a break now,
25 or you want to take a break in a half hour? What are you

1 suggesting?

2 ATTORNEY NISENBAUM: Take a break in half an hour.

3 ATTORNEY KANTER: Okay. And how long of a break
4 do you need to take?

5 ATTORNEY NISENBAUM: I don't know. Maybe less,
6 but. You know, school is 25 minutes away.

7 ATTORNEY KANTER: That's fine by me.

8 Damon, is that all right with you? Do you --

9 THE WITNESS: Yeah, that's fine.

10 ATTORNEY KANTER: Okay.

11 ATTORNEY NISENBAUM: Thank you.

12 ATTORNEY NISENBAUM: Q. All right. So we're at
13 7:42. Hit Play.

14 (Playing designated video file, Exhibit 5.)

15 ATTORNEY NISENBAUM: Q. Okay. Pausing at 7:48.

16 Someone said "Never mind, you got that. That's
17 the good stuff." Do you know whose voice that is?

18 ATTORNEY FINE: Calls for speculation.

19 ATTORNEY NISENBAUM: Q. If you know.

20 A. One of the police officers, I think.

21 Q. Okay. And the video just showed you injecting
22 Mr. Gutzalenko with the midazolam or Versed in the left
23 deltoid without checking to see whether or not you hit a
24 vein; correct?

25 ATTORNEY KANTER: Well, objection; it's vague and

1 ambiguous and it's overly broad.

2 You mean besides the fact that he's injecting it
3 in the deltoid?

4 ATTORNEY NISENBAUM: I mean what I said.

5 ATTORNEY KANTER: All right. Those are my
6 objections.

7 You can answer.

8 THE WITNESS: Correct.

9 ATTORNEY NISENBAUM: Q. Thank you.

10 We're at 7:48. I'm going to hit Play.

11 (Playing designated video file, Exhibit 5.)

12 ATTORNEY NISENBAUM: Q. Someone said -- pausing at
13 7:51.

14 Someone said "Ah, we're doing great. He's
15 unconscious, so that's good."

16 Do you know who said that?

17 ATTORNEY FINE: Calls for speculation.

18 ATTORNEY KANTER: Join.

19 THE WITNESS: I don't know.

20 ATTORNEY NISENBAUM: Q. Was it you?

21 A. No, it was not.

22 Q. Okay.

23 (Playing designated video file, Exhibit 5.)

24 ATTORNEY NISENBAUM: Q. Okay. So we're at 8:07.

25 After you injected Mr. Gutzalenko, what did you do

1 to make sure that you had, for example, breathing equipment
2 or other equipment in case he had a reaction to the Versed?

3 A. I had my entire ambulance fully stocked.

4 Q. Okay. And were you paying attention to him?

5 A. Yes.

6 ATTORNEY KANTER: Objection; vague; ambiguous;
7 overly broad.

8 ATTORNEY NISENBAUM: Q. Were you monitoring his
9 breathing; for example, counting how many breaths per every
10 ten seconds or something like that?

11 ATTORNEY KANTER: Same objections; lacks
12 foundation.

13 THE WITNESS: I was not counting them, but I was
14 watching him breathe.

15 ATTORNEY NISENBAUM: Q. Okay. Were you keeping
16 your hand on his pulse?

17 A. Not at that point.

18 Q. Was anyone monitoring his pulse?

19 ATTORNEY FINE: Calls for speculation.

20 THE WITNESS: Not that I remember.

21 ATTORNEY NISENBAUM: Q. Okay. I'm going to pull
22 up the next exhibit.

23 And this will be -- I don't think I made this an
24 exhibit yet. This is the Pfizer midazolam injection
25 warning.

1 (Plaintiffs' Exhibit 6 marked
2 for identification.)

3 ATTORNEY NISENBAUM: Stop the Share there.
4 Start the Share again.

5 ATTORNEY NISENBAUM: Q. Okay. I assume you've
6 never seen this warning label for midazolam before?

7 A. I have not.

8 Q. Do you know if the warning labels for the same
9 drugs are the same for each brand? Even though it's a
10 different brand, it's the same drug -- is it the same
11 warning label, in your experience?

12 ATTORNEY KANTER: Objection; calls for
13 speculation; lacks foundation.

14 You can answer.

15 ATTORNEY FINE: Join.

16 THE WITNESS: I don't know. I don't see the
17 warning labels, like I said earlier.

18 ATTORNEY NISENBAUM: Q. Have you ever asked to see
19 the warning labels of the drugs that you use in emergency
20 care?

21 A. No.

22 Q. Do you simply rely on your -- on the company you
23 work for -- in this case AMR West -- to provide you the
24 proper training?

25 ATTORNEY KANTER: Objection; I think it misstates

1 testimony. He's also relying upon the County guidelines.

2 You can answer.

3 THE WITNESS: Yeah, I rely on AMR and the County.

4 ATTORNEY NISENBAUM: Q. Okay. Is there -- do you
5 do, like, an independent study?

6 ATTORNEY KANTER: Objection; vague and ambiguous;
7 overly broad.

8 ATTORNEY NISENBAUM: Q. Well, as lawyers we have
9 something called CLE. We're required to take ongoing
10 classes to stay up to date.

11 Do you have to do the same thing?

12 A. Yes.

13 Q. Okay. And does any of that include warning labels
14 on drugs?

15 A. No.

16 Q. Okay. Does any of that include warnings in the
17 use of certain drugs?

18 A. Depending on what class we take, sometimes they
19 do; sometimes they don't.

20 Q. Have you ever taken a class where Versed or
21 midazolam was discussed?

22 A. Yes.

23 Q. Okay. And in what context?

24 A. During our quarterly trainings and our -- if there
25 is any changes to the protocol on the amount -- the dosage

1 of a drug that we give, our AMR will put on a class before
2 that policy takes -- changes.

3 Q. So looking at this -- sorry, I just did
4 something -- okay. There we go.

5 So I just highlighted a section in the warnings
6 of -- this is for the Pfizer midazolam injection warning.

7 Under "Individualization of Dosage," it says
8 "Midazolam must never be used without individualization of
9 dosage. The initial intravenous dose for sedation in adult
10 patients may be as little as 1 milligram, but should not
11 exceed 2.5 milligrams in a normal healthy adult."

12 So obviously 2.5 milligrams is half the dosage of
13 a -- of what the County recommendations are at 5 milligrams;
14 correct?

15 A. For intravenous. I gave it intramuscular.

16 Q. I see. Intravenous.

17 Well, you thought you gave it intramuscular, but
18 you don't know whether it was intravenous or intramuscular;
19 correct?

20 ATTORNEY KANTER: Objection; argumentative; lacks
21 foundation.

22 THE WITNESS: Correct.

23 ATTORNEY NISENBAUM: Okay.

24 ATTORNEY KANTER: I'd like to take a break.

25 ATTORNEY NISENBAUM: Okay. I'm --

1 ATTORNEY KANTER: I'm going to take a break.

2 ATTORNEY NISENBAUM: Five minutes?

3 ATTORNEY KANTER: Yeah.

4 ATTORNEY NISENBAUM: All right. Five minutes.

5 (Recess: 12:26 P.M. to 12:28 P.M.)

6 ATTORNEY NISENBAUM: Q. I --

7 ATTORNEY KANTER: Oh, one second. I think -- I
8 think Mr. Richardson would like to clarify his last answer.

9 ATTORNEY NISENBAUM: I'm sorry. Was there a --
10 was there a private consultation during the break?

11 ATTORNEY KANTER: I'm just telling you that he'd
12 like to clarify his last answer.

13 ATTORNEY NISENBAUM: Well, if there was private
14 consultation during the break, that is improper. That
15 should not happen during a deposition. Unless it's to
16 assess a privilege; that's the only reason there should be
17 private consultation during a deposition.

18 ATTORNEY KANTER: I talked with him during the
19 break, and that's what he told me: he wanted to make a
20 clarification about his answer, and that's why I'm telling
21 you that.

22 ATTORNEY NISENBAUM: Okay. I mean, my point
23 remains.

24 ATTORNEY KANTER: So does mine.

25 ATTORNEY NISENBAUM: Q. What clarification are you

1 trying to make?

2 A. I believe I said "correct" to the administration
3 of Versed via intravenous, when in fact you can see on the
4 video I gave it intramuscularly.

5 Q. Oh.

6 A. Giving it intramuscularly, I still cannot be sure
7 if it actually hit a vein or not. But I did give this
8 medication intramuscularly.

9 Q. Well, you gave it, and you didn't do anything to
10 check whether you had hit a vein; correct?

11 ATTORNEY KANTER: I'll object it misstates his
12 prior testimony; it's argumentative in the sense he's
13 already also testified he intramuscularly administered it in
14 the deltoid.

15 You can answer.

16 THE WITNESS: Correct. And like I said before,
17 it's been -- gone out of practice to draw back on a syringe
18 in these types of situations.

19 ATTORNEY NISENBAUM: Q. Well, that's -- I thought
20 you said it was because the person was so aggressive; they
21 were moving; they were thrashing; they were flailing when
22 you gave it to them, that it made it impractical to do.
23 Impractical to aspirate the syringe.

24 ATTORNEY KANTER: Objection; misstates testimony.

25 THE WITNESS: I think I said it could cause more

1 damage.

2 ATTORNEY NISENBAUM: Q. It could cause more damage
3 because they were thrashing, moving violently, jerking --
4 you know -- doing things like that.

5 Correct?

6 A. Correct.

7 Q. That was not the case with Mr. Gutzalenko when you
8 injected him, though, was it?

9 A. Not at that time.

10 Q. Okay. So you had the time -- had you chosen to
11 take it, you had the time and the opportunity to aspirate
12 the syringe; correct?

13 A. Yes.

14 Q. Okay. Thank you.

15 All right. We were at 8:07. I'm going to
16 continue.

17 (Playing designated video file, Exhibit 5.)

18 THE WITNESS: Is this a video that we're watching?

19 ATTORNEY NISENBAUM: Q. This is the video -- oh,
20 I'm sorry. Let me go back. I forgot to change the Share.

21 So I've gone back a little bit. We're at 8:52
22 [sic]. I'm going to hit Play.

23 (Playing designated video file, Exhibit 5.)

24 ATTORNEY NISENBAUM: Q. Go forward.

25 (Playing designated video file, Exhibit 5.)

1 ATTORNEY NISENBAUM: Q. All right. Pausing at
2 7:58.

3 Someone said "Ivan, can you breathe?" Was that
4 you?

5 A. I don't think so.

6 I didn't hear that. Can you replay that?

7 Q. I think it was "Ivan? Can you breathe, buddy?"
8 I'm at 7:42.

9 (Playing designated video file, Exhibit 5.)

10 ATTORNEY NISENBAUM: Q. Did you hear it there?
11 "Ivan? Can you breathe, buddy?"

12 A. Yes.

13 Q. Okay. Was that you?

14 A. No.

15 Q. Okay. Someone said "He's unconscious, so that's
16 good," or words to that effect. Do you know who that was?

17 ATTORNEY FINE: Calls for speculation.

18 ATTORNEY KANTER: Join.

19 THE WITNESS: I do not.

20 ATTORNEY NISENBAUM: Q. Okay. Do you know if it
21 was you?

22 A. It was not me.

23 Q. Okay. Continuing, 7:56.

24 (Playing designated video file, Exhibit 5.)

25 ATTORNEY NISENBAUM: Q. Pausing at 8:03.

1 Let me ask you. What is your best recollection
2 of what the last volitional movement Mr. Gutzalenko made
3 was?

4 ATTORNEY FINE: Calls for speculation.

5 ATTORNEY KANTER: Yeah, join.

6 Lacks foundation.

7 ATTORNEY FINE: Join.

8 Calls for expert opinion.

9 ATTORNEY KANTER: Again, I'll join with that as
10 well.

11 THE WITNESS: I'm not sure.

12 ATTORNEY NISENBAUM: Q. Okay. Well, as you think
13 about it in your own personal recollection, can you recall a
14 time that he -- that Mr. Gutzalenko was making volitional
15 movements?

16 ATTORNEY FINE: Same objections.

17 ATTORNEY KANTER: Yeah. Join.

18 If you remember, you can answer.

19 THE WITNESS: Before I went to get the ambi- -- or
20 the Versed drawn up in the ambulance.

21 ATTORNEY NISENBAUM: Q. Right.

22 It's fair to say that when you came back with the
23 Versed, you don't have a recollection of Mr. Gutzalenko
24 making volitional movements; correct?

25 ATTORNEY FINE: Same objections.

1 ATTORNEY KANTER: Vague and ambiguous; lacks
2 foundation; calls for speculation.

3 ATTORNEY FINE: Join.

4 THE WITNESS: Correct.

5 ATTORNEY NISENBAUM: Q. Okay. I'll continue.
6 We're at 8:03.

7 (Playing designated video file, Exhibit 5.)

8 ATTORNEY NISENBAUM: Q. Okay. We're at 8:46.

9 And that's you -- are we looking at your back
10 here?

11 A. Yes.

12 Q. Okay. All right. And it looks like you're trying
13 to revive Mr. Gutzalenko?

14 A. I was trying to see his alert and oriented -- or
15 see how alert he was. I wasn't trying to revive him; I was
16 trying to see how alert he was.

17 Q. Okay. You're saying -- did you say, I think --
18 "Ivan, can you breathe? Are you there? Wake up, buddy?"

19 Play it again. Go to 8:31.

20 (Playing designated video file, Exhibit 5.)

21 ATTORNEY NISENBAUM: Q. "Ivan? Can you breathe,
22 buddy?" That was your voice; right?

23 A. I don't know. I don't remember saying that.

24 Q. Okay. Do you recognize your voice?

25 A. I do -- I --

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

1 ATTORNEY KANTER: Asked and answered, but you can
2 answer again.

3 THE WITNESS: I do recognize my voice, but I don't
4 think that that sounded like me at that time.

5 (Playing designated video file, Exhibit 5.)

6 ATTORNEY NISENBAUM: Q. So is it the officer
7 saying "Wake up, buddy? Are you there?"

8 ATTORNEY FINE: Calls for speculation.

9 ATTORNEY KANTER: Join.

10 THE WITNESS: I think so.

11 ATTORNEY NISENBAUM: Q. Okay. And he's turned
12 blue in the face; correct?

13 A. Correct.

14 ATTORNEY KANTER: Objection; vague and ambiguous;
15 overly broad.

16 You can answer.

17 ATTORNEY FINE: Join.

18 THE WITNESS: Correct.

19 ATTORNEY NISENBAUM: Q. Well, someone actually
20 noticed it and they say it. I'll play it.

21 (Playing designated video file, Exhibit 5.)

22 ATTORNEY NISENBAUM: Q. Pausing at 8:53.

23 So someone said "Hey, he's getting blue in the
24 face."

25 What does that mean medically, as far as you know?

1 ATTORNEY KANTER: Objection; lacks foundation; it
2 calls for speculation.

3 ATTORNEY FINE: Join.

4 THE WITNESS: Usually there has been a compromise
5 in the cardiovascular system or in the respiratory system.

6 ATTORNEY NISENBAUM: Q. Okay. It means -- as far
7 as you're aware, it means that there is not -- well, the
8 blue is called cyanosis; right?

9 A. Correct.

10 Q. And cyanosis is a lack of oxygenation of the
11 blood; correct?

12 A. Correct.

13 Q. Okay. And when you see a person you're treating
14 medically after you've given them Versed, and they turn
15 cyanotic -- isn't there a reversal -- a reversal drug that's
16 to be used?

17 ATTORNEY KANTER: Objection; calls for expert
18 opinion testimony; incomplete hypothetical.

19 THE WITNESS: Yes, there is, but Contra Costa AMR
20 does not supply us with that.

21 ATTORNEY NISENBAUM: Q. So they supply you with
22 the drug -- with the drug that can be lethal, but they don't
23 give you the reversal agent for it?

24 ATTORNEY KANTER: Objection; argumentative.

25 ATTORNEY NISENBAUM: Q. Is that right?

1 A. Correct.

2 Q. Okay. Well, what about AMR?

3 A. I thought we were talking about AMR. AMR, who I
4 was working --

5 Q. You were talking about the County. You said
6 Contra Costa County, but we're talking about AMR West.

7 AMR West supplies you with the drug -- the
8 midazolam that you use on people that you know can be
9 lethal, but they do not give you the reversal agent for an
10 overdose when it occurs. Of midazolam.

11 Is that correct?

12 ATTORNEY KANTER: Objection; argumentative.

13 THE WITNESS: That is correct because Contra Costa
14 County does not let us use that drug, so AMR cannot let us
15 use that drug.

16 ATTORNEY NISENBAUM: Q. Okay. Do you know why
17 Contra Costa County -- what's it called, the name of that
18 drug?

19 A. I can't remember the name.

20 Q. Okay. Well, I actually have it. If you'll give
21 me a moment.

22 Is it Flumazenil?

23 A. Say it one more time?

24 Q. I'm not sure if I'm pronouncing it correctly, but
25 Flumazenil?

1 A. "Flumazenil."

2 Q. Yeah. Is that it?

3 A. Yes.

4 Q. Did you consider that Mr. Gutzalenko had suffered
5 an overdose of midazolam?

6 A. It was one of the considerations.

7 Q. Okay. So did you tell anyone -- ask anyone -- did
8 you tell that to anyone?

9 A. No, because it wouldn't matter to the rest of the
10 people on the scene because they didn't have the medical
11 authority that I had.

12 Q. Could you have gotten Flumazenil there to the
13 scene?

14 A. No.

15 Q. Is it just not allowed anywhere in Contra Costa
16 County?

17 A. Not for use on an ambulance.

18 Q. Okay. Is it used -- is it allowed to be used in a
19 hospital?

20 A. Yes.

21 Q. Okay. I've got a couple more minutes before I
22 have to leave. We're at 8:53.

23 (Playing designated video file, Exhibit 5.)

24 ATTORNEY NISENBAUM: Q. We're at 9:01.

25 Someone said, I think, "Is he coding?" But I'm

1 not positive. And I think you responded "Yeah, pretty
2 much."

3 Do you know what was said there?

4 A. I think that you -- what you just said was what
5 was stated.

6 Q. Okay. "Coding" means a person is dying; right?

7 A. Yes, going into cardiac and/or respiratory arrest.

8 Q. We're at 9:01; continuing.

9 (Playing designated video file, Exhibit 5.)

10 ATTORNEY NISENBAUM: Q. Pausing at 9:33.

11 The LUCAS device is the automated chest pumper?

12 A. Correct.

13 ATTORNEY NISENBAUM: Okay. I think I have to go.

14 All right. So let's take that break -- hour
15 break. We'll start again at 1:45. I really don't have a
16 huge amount longer, but -- you know, maybe a half an hour,
17 I'm guessing.

18 ATTORNEY KANTER: Okay. We'll see you back then.

19 ATTORNEY NISENBAUM: Okay.

20 ATTORNEY FINE: So 1:45. Okay.

21 (Lunch recess: 12:44 P.M. to 1:46 P.M.)

22 --o0o--

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

AFTERNOON SESSION

EXAMINATION (RESUMED)

BY ATTORNEY NISENBAUM:

Q. I'm going to go back to sharing the screen. Back to the video.

All right. I'm going to continue. We're at 9:29. I'll hit Play.

(Playing designated video file, Exhibit 5.)

ATTORNEY NISENBAUM: Q. I'll pause it at 9:41.

The person performing CPR is who?

A. It looks like Dan Burnett.

Q. Okay. Continuing at 9:41.

(Playing designated video file, Exhibit 5.)

ATTORNEY NISENBAUM: Q. Pausing at 9:46.

They're asking about -- the officers are asking about Narcan. Do you recall that?

A. I don't remember it at that time, but the video says otherwise.

Q. Okay. So -- and you don't mention anything about a possible reaction to the Versed or midazolam; correct?

A. Correct.

Q. Continuing at 9:46.

(Playing designated video file, Exhibit 5.)

ATTORNEY NISENBAUM: Q. I'm pausing at 10:03.

You mentioned -- you've testified that the

1 practice of aspirating a syringe when you inject
2 intramuscularly is no longer practiced in your experience.

3 Is there -- do you have any documentation to back
4 that up that you can point me to?

5 A. No documentation. It's what we've been discussing
6 in our person -- in-person classes.

7 Q. Okay. Well, since this happened, have you taken
8 in-person classes? Or Zoom classes? Either/or?

9 A. Yeah, I've taken in-person classes, but nothing
10 regarding administration of Versed unless it was with our
11 quarterly updates at AMR.

12 Q. No, I meant -- I'm just talking about -- I assume
13 other drugs get administered intramuscularly as well; right?

14 A. Some.

15 Q. So for any of them, have you had classes where --
16 well, strike that.

17 What classes have you discussed not -- not
18 aspirating the plunger? Or the syringe?

19 A. Mainly during the classes where we go over the use
20 of Versed and/or epinephrine or IN injections.

21 Q. Does epinephrine carry the same type of overdose
22 risk as Versed?

23 A. No, it has a -- it's a different type of
24 medication.

25 Q. Okay. So the issue, obviously, with Versed is you

1 can overdose and die from it.

2 Can you overdose and die from epinephrine?

3 ATTORNEY KANTER: Objection; lacks foundation;
4 calls for speculation; calls for an expert opinion.

5 You can answer.

6 ATTORNEY FINE: Join.

7 ATTORNEY NISENBAUM: Q. Based on your training.

8 ATTORNEY KANTER: Same objections.

9 You can answer.

10 THE WITNESS: It can have harmful effects.

11 ATTORNEY NISENBAUM: Q. Okay. Lethal effects?

12 ATTORNEY KANTER: Same objections.

13 THE WITNESS: Yes.

14 ATTORNEY NISENBAUM: Q. And is that dependent on
15 whether you deliver it intramuscularly as opposed to
16 intravenously?

17 ATTORNEY KANTER: Same objections, and also an
18 incomplete hypothetical.

19 THE WITNESS: Yes.

20 ATTORNEY NISENBAUM: Q. Okay. So the same type of
21 risk applies for epinephrine as Versed if you're intending
22 to administer intramuscularly but accidentally hit a vein.

23 ATTORNEY KANTER: Objection; vague and ambiguous;
24 overly broad; lacks foundation; incomplete hypothetical.

25 THE WITNESS: Yes.

1 ATTORNEY NISENBAUM: Q. Okay. So what -- in the
2 classes that you had where this has been discussed -- well,
3 let me ask you.

4 Can you tell me a specific -- the name of a
5 specific class where it's been discussed?

6 A. These have been all of the update classes that
7 we're required to take by American Medical Response in
8 Contra Costa County. Every quarter we have our quarterly
9 trainings, and they discuss different aspects of our job
10 during these trainings.

11 The Versed is also discussed -- like I said
12 earlier -- whenever there is a change to the protocol.

13 Q. Okay. Is it presented in a PowerPoint-type
14 format? Do you have handouts? How -- what documents
15 accompany the presentation?

16 A. It's usually an in-person class with -- well,
17 during COVID it was via Zoom. But it's usually a person
18 speaking at a podium with a PowerPoint.

19 Q. On any of the PowerPoint slides, do you recall
20 whether anything -- there was any discussion about
21 aspiration of a syringe when administering either Versed or
22 epinephrine?

23 A. I don't remember.

24 Q. Okay. Is there anything that says not to do it?

25 A. I don't recall.

1 ATTORNEY KANTER: Belated objection; it's vague
2 and ambiguous, and it's overly broad.

3 Are you talking about these PowerPoint
4 presentations?

5 ATTORNEY NISENBAUM: Q. Well, whether at a
6 PowerPoint presentation or some other training.

7 ATTORNEY KANTER: All right. I'll just object,
8 but you -- you can answer it again if you like, or maybe
9 you've already answered.

10 THE WITNESS: Okay.

11 I don't recall.

12 ATTORNEY NISENBAUM: Q. Okay. I think you told
13 me, if I understood correctly, there could be some damage if
14 the person is jerking or, you know, still thrashing around.

15 What type of damage would occur by aspirating the
16 syringe if a person were jerking or moving around?

17 ATTORNEY KANTER: Objection; vague and ambiguous;
18 overly broad; lacks foundation; incomplete hypothetical;
19 calls for expert opinion.

20 You can answer if you're able.

21 THE WITNESS: It's not the aspiration that can
22 cause the damage; it's the needle inside the arm when the
23 person is thrashing around that causes the damage.

24 ATTORNEY NISENBAUM: Q. Okay. Like, the needle
25 could break off?

1 A. It could bend; it could break off; it can damage
2 tissue underneath the skin.

3 Q. Okay. All right. But when a person is not
4 thrashing around, is there -- is it your understanding that
5 the change around aspiration of the syringe applies even if
6 the person is not thrashing around or not moving
7 significantly?

8 ATTORNEY KANTER: Objection; incomplete
9 hypothetical; vague and ambiguous.

10 THE WITNESS: Historically, no. It's a practice
11 that hasn't really been practiced in EMS for quite some
12 time.

13 And also it's based on the location that we give
14 the injections. You know, the deltoid or the thigh are
15 specifically chosen because you're less likely to cause
16 damage to any significant vascular structure.

17 ATTORNEY NISENBAUM: Q. So I'm trying to
18 understand this because I don't see it anywhere.

19 There is a pretty distinct -- on the adult
20 behavioral chart, a pretty -- I would say substantial
21 difference in how much midazolam you're supposed to give
22 depending on whether it's intravenous or intramuscular.

23 And so without knowing whether you're in a vein,
24 it sounds like it's a crapshoot.

25 ATTORNEY KANTER: Objection -- go ahead. Are you

1 finished with your question?

2 ATTORNEY NISENBAUM: (Inaudible.)

3 ATTORNEY KANTER: Are you finished with your
4 question?

5 ATTORNEY NISENBAUM: Yes.

6 ATTORNEY KANTER: I object it's argumentative;
7 it's -- lacks foundation.

8 Do you understand the question?

9 THE WITNESS: Not really. Can you ask it again?

10 ATTORNEY NISENBAUM: Q. Well, you wouldn't know
11 whether you hit a vein or not unless you checked by
12 aspiration; right?

13 ATTORNEY KANTER: Well, I'll object it's vague and
14 ambiguous and overbroad in the sense that the question
15 doesn't make clear whether you're administering it
16 intramuscularly or intravenously. But --

17 ATTORNEY NISENBAUM: Q. Well, assuming that
18 you're -- okay, I'll rephrase it.

19 You know the term "crapshoot"; right?

20 ATTORNEY KANTER: Objection; calls for
21 speculation; lacks foundation; argumentative.

22 THE WITNESS: Yes.

23 ATTORNEY NISENBAUM: Q. It means you're leaving it
24 up to chance; right?

25 ATTORNEY KANTER: Same objections.

1 THE WITNESS: Yes.

2 ATTORNEY NISENBAUM: Q. Okay. And so if I
3 understand you correctly. You knew at the time of this
4 incident with Mr. Gutzalenko, that if you injected him in a
5 manner that caused an intravenous injection of midazolam,
6 that it would be far more dangerous for him than if it were
7 given to him intramuscularly, whether you intended the
8 intravenous or not; correct?

9 ATTORNEY KANTER: I'll just object that it lacks
10 foundation and it misstates testimony.

11 You can answer.

12 THE WITNESS: I gave him the injection in the
13 deltoid, like I said earlier, because that's one of the
14 places that has been determined to have less vascular
15 structure and less likely to administer it into a vein that
16 way.

17 ATTORNEY NISENBAUM: Q. I understand, but that
18 doesn't mean that there is no veins. So it's still a
19 crapshoot unless you check; right?

20 ATTORNEY KANTER: I'll object it misstates his
21 testimony; it's very argumentative.

22 You can answer.

23 THE WITNESS: It's possible, but I doubt if I
24 would even get drawback even if I did hit a vein.

25 ATTORNEY NISENBAUM: Q. Why wouldn't you get

1 drawback if you did --

2 A. Numerous reasons. The structure of the vein; the
3 size of the vein; how the patient would be positioned when
4 aspirating.

5 Q. Okay. All right. So if it were a smaller vein,
6 you would be less likely to get drawback?

7 A. Correct.

8 Q. And what about the body positioning of the person
9 would change how likely you are to get drawback of blood?

10 A. If an arm was farther back behind the patient, you
11 might alter the position of some veins when you stick the
12 needle in.

13 Q. Okay. But the needle would still be where it was;
14 right?

15 ATTORNEY KANTER: Objection; misstates testimony.

16 ATTORNEY NISENBAUM: Q. Go ahead.

17 A. The needle would still be in the deltoid.

18 Q. It would be in the deltoid, and I'm only asking
19 what is the harm -- in the situation that Mr. Gutzalenko was
20 in, what is the harm in aspiration? He's not resisting at
21 that time. What's the harm?

22 ATTORNEY KANTER: Objection; vague and ambiguous;
23 overly broad; argumentative.

24 You can answer.

25 THE WITNESS: No harm, I guess.

1 ATTORNEY NISENBAUM: Q. So there was no reason not
2 to aspirate at that time; correct?

3 ATTORNEY KANTER: Objection; misstates testimony;
4 it's argumentative; vague and ambiguous; incomplete
5 hypothetical.

6 You can go ahead.

7 THE WITNESS: Like I said before, it's been a
8 practice that hasn't been very common.

9 ATTORNEY NISENBAUM: Q. Well, you say that; my
10 information is different.

11 But my question to you is there is no harm that
12 that -- given that Mr. Gutzalenko -- at the time you came
13 back with the syringe -- that Mr. Gutzalenko was handcuffed;
14 he was conscious -- well, strike that.

15 Was he conscious?

16 ATTORNEY KANTER: Objection; lacks foundation;
17 calls for speculation; calls for an expert opinion.

18 ATTORNEY FINE: Join.

19 ATTORNEY KANTER: You can answer.

20 THE WITNESS: I'm sorry? What was that last part?

21 ATTORNEY KANTER: You can ans- -- you can answer.

22 ATTORNEY NISENBAUM: Q. Was Mr. Gutzalenko
23 conscious when you injected him?

24 ATTORNEY KANTER: Same objections.

25 You can answer.

1 ATTORNEY FINE: Join.

2 THE WITNESS: At the time, I thought so.

3 ATTORNEY NISENBAUM: Q. You thought so because his
4 eyes were open; correct?

5 A. And he was breathing.

6 Q. His eyes were open; he was breathing; he had
7 calmed down a lot. Correct?

8 A. Correct.

9 Q. Okay. And then you just went ahead and injected
10 him with the Versed; right?

11 ATTORNEY KANTER: Objection --

12 THE WITNESS: Right.

13 ATTORNEY KANTER: -- argumentative.

14 You can answer.

15 THE WITNESS: Correct.

16 ATTORNEY NISENBAUM: Q. Okay. So at that point,
17 he was not in a state of excited delirium, was he?

18 ATTORNEY KANTER: Objection; calls for an expert
19 opinion; lacks foundation; calls for speculation.

20 ATTORNEY FINE: Join.

21 ATTORNEY NISENBAUM: Q. Based on your training.

22 ATTORNEY KANTER: Same objections.

23 ATTORNEY FINE: Join.

24 THE WITNESS: I don't know if he was in excited
25 delirium or if he was still agitated.

1 ATTORNEY NISENBAUM: Q. Well, when you injected
2 him at that time -- strike that.

3 After you came back from the ambulance with the
4 shot of Versed and you observed Mr. Gutzalenko, he was no
5 longer exhibiting extreme aggression or violence; correct?

6 A. Correct, at that time.

7 Q. He did not appear to be, at that time, exhibiting
8 increased strength; correct?

9 A. Correct.

10 Q. And from what you could tell, he was not
11 hyperthermic; correct?

12 A. Correct.

13 Q. In fact, you noted in the medical -- in the
14 medical records that his skin was warm. W-a-r-m, warm.

15 Correct?

16 A. I believe so, if that's what my PCR says.

17 Q. Well, it does say that.

18 Nowhere does it say that he was hot.

19 So at the time that you injected Mr. Gutzalenko,
20 you could have injected 1 millimeter -- 1 milliliter of --
21 I'm sorry -- 1 milligram of midazolam; correct?

22 A. That's not what our protocol states.

23 Q. Well, the protocol on the left side for aggressive
24 or agitated, possible psychosis, possible danger to self or
25 others: midazolam 5 milligrams, or midazolam 1- to

1 3-milligram IV -- oh, I see. That's IV.

2 So that protocol would say 5 milligrams, period.
3 Maximum of 5 milligrams. Correct?

4 A. Correct.

5 ATTORNEY KANTER: Well, it says maximum 10
6 milligrams.

7 ATTORNEY NISENBAUM: Q. That's on the right side.
8 That's under the Excited Delirium Syndrome chart.

9 On the left side it says maximum 5 milligrams for
10 the aggressive or agitated, possible psychosis, possible
11 danger to self or others.

12 I can pull it up, but -- am I right,
13 Mr. Richardson?

14 A. I believe so, without looking at it, yes.

15 Q. Okay. You also had the option to not give
16 Mr. Gutzalenko Versed at all when you returned with it --
17 (Audio interruption.)

18 THE REPORTER: I'm sorry. I didn't hear the very
19 end. Sorry.

20 ATTORNEY NISENBAUM: Q. -- and noted that he was
21 apparently unconscious; correct?

22 ATTORNEY KANTER: I'll object that misstates the
23 testimony; it's argumentative.

24 ATTORNEY FINE: Join.

25 ATTORNEY KANTER: Lacks foundation.

1 You can answer.

2 ATTORNEY FINE: Join.

3 THE WITNESS: I didn't think he was unconscious at
4 the time because I saw his eyes were open and he was still
5 breathing.

6 ATTORNEY NISENBAUM: Q. Okay. I see.

7 But again, he wasn't moving aggressively at that
8 time; he wasn't moving significantly at that time. Correct?

9 A. Correct.

10 Q. Did you think he was suffering a medical
11 emergency?

12 A. I thought he was suffering a medical emergency,
13 but I wasn't sure what kind.

14 Q. And did you know what drugs he had taken?

15 A. No.

16 Q. So how would you know whether or not -- whether or
17 not midazolam would interfere with whatever drugs he may
18 have taken?

19 A. We don't have the luxury of having a lab to be
20 able to do blood samples before we give these medications,
21 so it's got to be a best guess scenario based on the limited
22 information that we have.

23 Q. Well, when the person has calmed down in a manner
24 that he had when you came back -- you know, a person that,
25 you know, was hardly moving -- don't you have an -- aren't

1 you supposed to reevaluate the situation?

2 ATTORNEY KANTER: I'm going to object. You're --
3 the question is asking for an expert opinion at this point.

4 ATTORNEY NISENBAUM: Q. Based on your training,
5 aren't you supposed to reevaluate the situation?

6 ATTORNEY KANTER: Yeah, same objections.

7 The way you've -- the way you have asked the
8 question, you're asking for him to retrospectively determine
9 whether or not he should have done something else, and
10 that's asking for expert opinion testimony. I'm directing
11 him not to answer.

12 ATTORNEY NISENBAUM: That's totally inappropriate.
13 There is no grounds to not answer that question.

14 ATTORNEY KANTER: When you're calling for
15 retrospective expert opinion testimony, it's totally
16 appropriate.

17 ATTORNEY NISENBAUM: Q. I'm not calling for
18 retrospective expert opinion testimony; I'm asking you based
19 on your training -- based on your training, right? You have
20 been trained, and you were trained, for 20 years as an EMT
21 paramedic; right?

22 A. At that time, I think it was 17 years.

23 Q. Okay. Right, that -- currently it's 20; at that
24 time 17.

25 That training tells you that before you give a

1 medication -- a sedative like Versed -- you should
2 reevaluate the subject to see if it's still appropriate to
3 give the Versed; correct?

4 ATTORNEY KANTER: I'll object it's an incomplete
5 hypothetical; I think it does call for expert opinion.

6 You can answer about your training.

7 THE WITNESS: We have been trained to reevaluate
8 patients multiple times.

9 ATTORNEY NISENBAUM: Q. Okay. Including after
10 some period of time has passed. Because you went to go draw
11 up the Versed, you come back, and there appears to be a
12 change in the person's alertness or orientation -- their
13 medical status -- correct?

14 A. There did appear to be a change.

15 Q. Okay.

16 ATTORNEY KANTER: Well, he's not asking about --
17 you're not asking about this particular situation; you're
18 asking about his training. Correct?

19 ATTORNEY NISENBAUM: Q. I'm asking about your
20 training. But again, when there is a change in the person's
21 medical status in between the time you go get a medication
22 to where the medication is for the purpose of remedying the
23 person's status, you're supposed to reevaluate them before
24 you give it; correct?

25 ATTORNEY KANTER: And this is, again, based upon

1 when he was trained?

2 ATTORNEY NISENBAUM: Yes.

3 ATTORNEY KANTER: I'll object that it's an
4 incomplete hypothetical; vague and ambiguous; and it calls
5 for expert opinion.

6 But I'll let you answer it based on your training.

7 THE WITNESS: Yes, I have been trained to
8 reevaluate patients during changes in their appearance.

9 ATTORNEY NISENBAUM: Q. Okay. And
10 Mr. Gutzalenko's appearance had changed between the time you
11 left to get the Versed to when you came back with the
12 Versed; correct?

13 ATTORNEY KANTER: I'll object it's vague and
14 ambiguous and overly broad -- overly broad.

15 You can answer.

16 THE WITNESS: Correct.

17 ATTORNEY NISENBAUM: Q. And it had changed with
18 respect to his level of aggression and his physical
19 resistance; correct?

20 A. Correct.

21 Q. It had reduced -- the level of aggression and
22 physical resistance had reduced to, essentially, zero;
23 correct?

24 ATTORNEY KANTER: Objection; vague and ambiguous;
25 overly broad; calls for speculation; lacks foundation.

1 You can answer.

2 THE WITNESS: Correct. His activity level was a
3 lot less because he was in handcuffs.

4 ATTORNEY NISENBAUM: Q. Sure. He was in
5 handcuffs, but he wasn't -- he wasn't kicking his feet, he
6 wasn't thrashing around when you came back with the Versed;
7 correct?

8 A. Correct.

9 Q. Okay. I assume that you're trained to consider --
10 we heard the officers talk about -- you know, mentioned, I
11 guess, the anti-narcotic thing.

12 You're trained to consider that the people that
13 you respond to, who are suffering medical emergencies, may
14 be under the influence of certain types of drugs; correct?

15 A. Correct.

16 Q. And you're trained to take that into consideration
17 when you give them a drug -- correct? -- that might
18 interfere with whatever they've taken.

19 A. Correct.

20 Q. Okay. So what are you -- how are you trained to
21 identify a person who appears to be under the influence of
22 either cocaine or methamphetamine? Stimulants.

23 A. A lot of times they'll have rapid breathing. A
24 lot of times they will have a rapid pulse. A lot of times
25 they will be altered. Sometimes they're going to be

1 agitated; excited. A bunch of different signs and symptoms
2 associated with that.

3 Q. Did you check Mr. Gutzalenko's pulse before you
4 gave him Versed?

5 A. No.

6 Q. At any time before?

7 A. Yes, I did. I felt a radial pulse when I was at
8 his left hand.

9 Q. Okay. And were you able to tell if it was fast?

10 A. It was fast.

11 Q. And what does "fast" mean?

12 A. Anything above 100.

13 Q. Okay. What did it feel like it was to you?

14 A. I believe on the PCR I said it was 110.

15 Q. I think that's correct.

16 So does that -- did you have a -- (Audio
17 interruption.)

18 (Reporter clarification.)

19 ATTORNEY NISENBAUM: -- a belief.

20 ATTORNEY NISENBAUM: Q. Did you have a belief that
21 Mr. Gutzalenko was under the influence of a stimulant drug
22 like cocaine or methamphetamine?

23 A. Yes, it appeared that he was under the influence
24 of some drug, but I couldn't tell you what it -- I wasn't
25 sure what he was on.

1 Q. What type of drugs would the use of Versed be
2 contraindicated with?

3 ATTORNEY KANTER: I'll just object it -- I'll just
4 object it calls for expert opinion testimony; it calls for
5 speculation.

6 You can answer.

7 ATTORNEY NISENBAUM: Q. From your training.

8 A. The fentanyl. The heroins. The -- any other
9 type of opioid.

10 Q. Okay. Opioids but not stimulants?

11 ATTORNEY KANTER: Same objections.

12 THE WITNESS: Correct.

13 ATTORNEY NISENBAUM: Q. Let me ask you this.

14 "Pulseless electrical activity." What is that?

15 A. That is a rhythm on our monitor where we have
16 organized electrical activity of the heart but it's not
17 producing a pulse.

18 Q. Do you know whether or not the main cause of
19 pulseless electrical activity is hypoxia?

20 ATTORNEY KANTER: Objection; lacks foundation;
21 calls for speculation; calls for expert opinion testimony --
22 I'll leave it at that.

23 You can answer if you're able.

24 THE WITNESS: I'm going to call it PEA for short.

25 ATTORNEY NISENBAUM: Q. Sure.

1 A. PEA can be caused by multiple issues: cardiac,
2 respiratory, metabolic. A bunch of different things can
3 cause it.

4 Q. At some point you were able to get a heartbeat
5 back for Mr. Gutzalenko; correct?

6 A. Correct.

7 Q. And that happened in the ambulance?

8 A. Yes.

9 Q. And how long was he without a heartbeat?

10 ATTORNEY KANTER: Objection; calls for
11 speculation; lacks foundation.

12 ATTORNEY FINE: Join.

13 ATTORNEY KANTER: If you can answer that, go
14 ahead. I don't want you to guess.

15 THE WITNESS: Without taking a look at the PCR,
16 that's all it's going to be is a guess.

17 ATTORNEY NISENBAUM: Q. Well, I'll pull the PCR
18 up.

19 (Pause.)

20 Okay. Hopefully I have the PCR on the screen?

21 A. Yes.

22 Q. Okay. All right. Where would I find that?

23 A. The treatment response area. So slide down?
24 Farther?

25 Okay, this is the beginning of the treatment

1 response.

2 Q. Where it says "Vital Signs"?

3 A. Yeah, you see -- exactly.

4 Q. Okay.

5 A. So you see at 10:47 is when I documented that he
6 had a pulse and he was breathing, and his Glasgow Coma
7 Scale.

8 And then I believe at 10:50, was when -- or I'm
9 sorry.

10 Q. I see it there. 10:50?

11 A. Yeah.

12 So he still had a Glasgow Coma Scale of 13.

13 And then continue down?

14 Q. Hold on.

15 At 10:47 it's 13, but at 10:50 it's 3.

16 A. Oh, okay. Yes, I see that.

17 Q. Right?

18 So 3 is the lowest score possible; right?

19 A. Correct.

20 Q. That means no pulse, no breath -- and I forget the
21 other one.

22 A. No, it has -- the Glasgow Coma Scale doesn't
23 correspond with the pulse and the respiratory rate; it's
24 just the spontaneous eye movement, the verbal commands, and
25 the motor function.

1 Q. Okay. So when you have 3, that's -- is that full
2 Coma?

3 A. Or they're just not responding.

4 Q. Okay.

5 Then at 10:52 -- so these are scores automatically
6 entered by -- by the machine?

7 A. The Glasgow Coma Scale -- I have to put in.

8 Q. Okay. Do you put in the 4 -- the 4 and the 5?
9 The E, V, and the M?

10 A. Yes. So.

11 Q. Okay. So at 10:50, you put in the 1, 1, 1; right?

12 A. Mm-hmm.

13 Q. Okay. Then at 10:50- -- the same entry at 10:52.
14 At 10:53, there is "Pulseless Electrical
15 Activity."

16 Did you put in the -- did you put that in, or was
17 that automatically entered?

18 A. I believe I put that in.

19 Q. And then at 10:54: 1, 1, 2 on the Glasgow Coma
20 Scale.

21 So what was the 2?

22 A. I think that might have been just a typo.

23 Q. Okay. Your best recollection is that it should
24 have been 1, 1, 1 for 3; correct?

25 A. Correct.

1 Q. Okay. All right. Then at 10:56, Pulseless
2 Electrical Activity again; and the Glasgow Coma score stays
3 the same for all the rest of them.

4 Correct?

5 A. That is correct.

6 Q. And "sinus tachycardia." What is that?

7 A. That is the change in his electrical rhythm.

8 Q. Is that when he got a heartbeat back?

9 A. Yes.

10 Slide up to that one? You can see just above that
11 one, at 11:02, he had a heart rate of 130.

12 Q. Right.

13 Okay. And what caused the heartbeat to come back,
14 if you know? Was it the CPR?

15 A. I believe it was the epinephrine that I gave.

16 Q. Okay. And when did you give the epinephrine?

17 A. It should be documented here.

18 Q. On this page, or...

19 A. It should be in the treatment and response also.

20 So slide down?

21 Q. Tell me when to stop.

22 A. Okay. I'll let you know.

23 Keep going?

24 Right there. So -- that's the administration of
25 Versed.

1 Keep going?

2 ATTORNEY KANTER: I thought we passed it.

3 THE WITNESS: Right here.

4 ATTORNEY NISENBAUM: Q. 10:56.

5 How many rounds of epinephrine did you do?

6 A. I believe two. There is a second one.

7 Q. Here it is, at 11:00 A.M.

8 I'm going to go back here.

9 I'm going to shop the Share.

10 The fact that you were able to get the heartbeat
11 back. Does that tell you anything about whether
12 Mr. Gutzalenko would have survived this event absent the
13 midazolam?

14 ATTORNEY KANTER: I'll object it calls for
15 expert -- retrospective expert opinion as phrased; I'm going
16 to direct him not to answer that question.

17 ATTORNEY NISENBAUM: Q. Okay. The fact that
18 Mr. Gutzalenko -- well, strike that.

19 Were you able to get the heartbeat back in a -- in
20 a pretty quick manner? I don't know how long these things
21 take.

22 ATTORNEY KANTER: Vague and ambiguous; overly
23 broad.

24 You can answer if you're able.

25 THE WITNESS: Yeah, I believe I was able to get

1 it -- on the PCR it says I got it back after two rounds of
2 epinephrine.

3 ATTORNEY NISENBAUM: Q. Okay. And that's normally
4 pretty quick, in your experience?

5 A. Sometimes it is and sometimes it's not.

6 Q. So you've revived people from cardiac arrest in
7 the past how many times, would you estimate?

8 A. I can't answer that accurately because of -- I
9 don't keep track of that stuff.

10 Q. Sure.

11 I'm just thinking is it more than 50? Is it more
12 than 100? I'm sure it's less than a thousand, but I could
13 be wrong there too.

14 A. I wish I was that good.

15 Cardiac arrests -- we get pulses back on cardiac
16 arrests probably half the time; 50 percent of the time. But
17 that still doesn't mean the outcome is going to be very good
18 for the person.

19 Q. Right.

20 And a lot of that depends on -- in your
21 experience -- it depends on how long they were without
22 pulses?

23 ATTORNEY KANTER: Well, object it's an incomplete
24 hypothetical; vague and ambiguous; overly broad; calls for
25 expert opinion.

1 You can answer.

2 THE WITNESS: Correct.

3 ATTORNEY NISENBAUM: Q. Okay. That's because the
4 longer a person doesn't have a pulse, the less blood -- you
5 know, the longer a time period is that there is not fresh
6 blood going to the brain, causing massive brain damage;
7 correct?

8 ATTORNEY KANTER: Same objections.

9 What are you -- I don't even know what you're
10 asking. Are you asking in this situation if that happened?

11 ATTORNEY NISENBAUM: I'm asking in his experience.
12 That's how this works.

13 ATTORNEY KANTER: Yeah, same objections. It's
14 calling for expert opinion testimony the way you're phrasing
15 it.

16 ATTORNEY NISENBAUM: Q. Go ahead. If you know.

17 A. I don't know the outcomes of most of these
18 patients because once I drop them off, there is not really
19 any way for me to follow up.

20 Q. I see.

21 So when a person dies, they don't normally tell
22 you?

23 ATTORNEY KANTER: Objection; argumentative.

24 There is no point in answering that question.

25 ATTORNEY NISENBAUM: Q. Yes, there is.

1 ATTORNEY KANTER: What's the question? He's dead,
2 and you're asking if he's told them he's dead?

3 ATTORNEY NISENBAUM: Q. Yeah, do they tell you
4 when a person dies?

5 ATTORNEY KANTER: The hospital?

6 ATTORNEY NISENBAUM: Q. Whoever. Whether it's the
7 hospital; whether it's someone at your job. I don't know.

8 ATTORNEY KANTER: Incomplete hypothetical.

9 You can answer as best you can.

10 THE WITNESS: No. A lot of times we don't find
11 out the answers to -- the outcomes to a lot of these
12 patients.

13 ATTORNEY NISENBAUM: Q. Okay. Is it your
14 understanding that the reason you found out the outcome in
15 this case is because the police were involved?

16 ATTORNEY KANTER: Objection; calls for
17 speculation; lacks foundation.

18 Answer if you're able.

19 THE WITNESS: I found out in this case because I
20 stayed at the hospital and I watched the emergency room team
21 working on Ivan call the code.

22 ATTORNEY NISENBAUM: Q. Why did you stay at the
23 hospital?

24 A. Because I had to get some signatures of a nurse, I
25 had to finish doing some PCRs, I had to get face sheets.

1 There is multiple reasons why we stayed at the hospital.

2 Q. Okay. That would normally be true of other people
3 who you've dealt with who were in cardiac arrest and you got
4 a pulse back and they get treated: you would have to do
5 paperwork for them too; right? And you would have hung
6 around and found out, sometimes, what would have happened?

7 ATTORNEY KANTER: Objection; vague and ambiguous;
8 overly broad; incomplete hypothetical.

9 ATTORNEY NISENBAUM: Q. I'm trying to understand
10 was there something different here?

11 ATTORNEY KANTER: Than what? The hundreds of
12 other times?

13 ATTORNEY NISENBAUM: Yes.

14 ATTORNEY KANTER: It's an incomplete hypothetical;
15 it's overly broad and vague and ambiguous.

16 You can answer if you're able.

17 THE WITNESS: No. The only reason why I stayed
18 longer at the hospital is because one of the Richmond PD
19 officers requested to interview me.

20 ATTORNEY NISENBAUM: Q. Okay. All right. That's
21 my question.

22 They asked you to stay to be interviewed; correct?

23 A. Correct.

24 Q. Okay. I thought that's what I asked before.

25 Although it's on the video, so I know the answer;

1 I do need a record of it.

2 Mr. Gutzalenko never consented to the injection;
3 correct?

4 A. No.

5 Q. No he did not?

6 A. No he did not.

7 Q. Okay. And you did not ask him to consent;
8 correct?

9 A. Correct. I didn't think he had decision-making
10 capacity to begin with.

11 Q. Okay. Is it fair to say that if he said no, you
12 would have still injected him?

13 ATTORNEY KANTER: Objection; calls for
14 speculation; lacks foundation.

15 THE WITNESS: Most likely, yes.

16 ATTORNEY NISENBAUM: Q. Okay. And the purpose of
17 the injection was to facilitate his transport -- well,
18 strike that.

19 He did not need -- to your knowledge, he wasn't
20 necessarily in acute danger of dying prior to the injection;
21 correct?

22 ATTORNEY KANTER: Objection; calls for
23 speculation; lacks foundation; calls for expert opinion
24 testimony; vague and ambiguous; overly broad.

25 If you know, you can answer.

1 THE WITNESS: I didn't know what his outcome was
2 going to be.

3 ATTORNEY NISENBAUM: Q. Okay. I guess my question
4 is more that when -- prior to the injection, it seemed --
5 did it seem to you like this was more of a psychiatric
6 problem?

7 ATTORNEY KANTER: Objection; asked and answered;
8 vague and ambiguous; overly broad.

9 You can answer.

10 THE WITNESS: I wasn't sure what was going on with
11 him. I wasn't sure if it was a psychological issue. I
12 wasn't sure if it was an illegal substance abuse issue. I
13 wasn't sure if it was a -- another medical issue causing him
14 to be this way.

15 ATTORNEY NISENBAUM: Q. Okay. Do you know how the
16 officers were restraining Mr. Gutzalenko while you were at
17 the ambulance?

18 ATTORNEY KANTER: Objection; lacks foundation;
19 calls for speculation.

20 THE WITNESS: No, I --

21 ATTORNEY KANTER: You can't guess; you weren't
22 there, but you can answer as best you can.

23 THE WITNESS: Okay.

24 I don't know because I wasn't there.

25 ATTORNEY NISENBAUM: Q. Well, you say you weren't

1 there, but the ambulance wasn't that far away. You would
2 have still had eyesight of them; right?

3 ATTORNEY KANTER: Objection; lacks foundation;
4 calls for speculation.

5 THE WITNESS: Negative. I was in the back of the
6 ambulance, and there was a -- I wasn't paying attention out
7 in one of the small windows that we had; I was paying
8 attention to the medication I was drawing up.

9 ATTORNEY NISENBAUM: Q. Okay. So during the --
10 while you were gone, Mr. Gutzalenko went from violently
11 resisting to hardly moving by the time you got back.

12 That's fair to say; correct?

13 A. Correct.

14 Q. Okay. Did you ask the officers "Is he calmed down
15 now?" "What happened while I was gone?" Anything like
16 that?

17 A. I don't recall asking that.

18 Q. Okay. Do you know what Epocrates is?

19 A. I believe -- "Epocrates"?

20 Q. Sure. "Epocrates."

21 A. Are you talking about the application? The phone
22 application for the medical drugs?

23 Q. Yeah, I think so.

24 Or is it a brand name for a drug?

25 A. I have never heard of a medication called that.

1 Q. Well, is it a brand name that sells medication --
2 different types of medications?

3 A. I don't know.

4 Q. Okay. Well, if I understand correctly, AMR West
5 does not require you to be familiar with the product warning
6 labels on the medications you prescribe; correct?

7 A. Correct.

8 Q. Do you know what the term "CNS depressed" means?

9 A. Yes.

10 Q. What does that mean?

11 A. Central nervous system depressed.

12 Q. Does that mean a person is unconscious?

13 A. Or altered.

14 Q. In a depressed way as opposed to a stimulated way?

15 A. Yes.

16 Q. Okay. Do you agree that Mr. Gutzalenko was CNS
17 depressed when you injected him with midazolam?

18 ATTORNEY KANTER: Objection; calls for
19 speculation; lacks foundation.

20 You can answer.

21 THE WITNESS: I can't answer that honestly because
22 I have no idea if he was -- if his CNS system was depressed
23 or not.

24 ATTORNEY NISENBAUM: Q. Well, what would you do to
25 find out?

1 A. Probably do an assessment. Throw him on the
2 monitor -- all the other things that I did in the back of
3 the ambulance.

4 Q. When you say "throw him on the monitor," are you
5 talking about, like an EEG or EKG?

6 A. Yeah. Do a -- you know -- initially do a
7 four-lead EKG to see what his cardiac rhythm is, and get a
8 pulse oximetry, and capnography, blood sugar -- there is a
9 whole host of things that we do to try to figure out what's
10 causing a person to be -- that are CNS depressed.

11 Q. Is CNS depression a caution for midazolam?

12 A. I believe so.

13 Q. Okay. Is a person complaining of shortness of
14 breath also a caution for midazolam?

15 A. It is a caution; not a contraindication.

16 Q. What does a "caution" mean?

17 A. To give the medication cautiously, and be prepared
18 for changes.

19 Q. Okay. And giving the medication cautiously --
20 that means giving it more slowly over time, or giving less
21 of it, or both?

22 A. If I -- if you have an IV established, then yes,
23 you give the medication at a slower rate.

24 In an IM injection, there is not really a safe way
25 to do that over time because the longer the needle stays in

1 the patient, the more damage can be done to the structures
2 underneath the puncture.

3 Q. Okay. But you can give them less; correct?

4 A. For an IV injection, yes.

5 Q. For an intramuscular injection, you can -- you can
6 give less than the 5 milligrams; correct?

7 A. I think it clearly states on our protocols we're
8 supposed to give 5 milligrams IM.

9 Q. And that's assuming that it's only intramuscular;
10 correct?

11 A. Correct.

12 Q. Was Mr. Gutzalenko agitated when you administered
13 the midazolam?

14 A. He did not appear to be.

15 Q. Okay. Is it fair to say that the reason why --
16 the reason -- well, strike that.

17 If I understand you correctly, your testimony is
18 that you wanted to administer the midazolam to sedate
19 Mr. Gutzalenko -- well, strike that -- to restrain
20 Mr. Gutzalenko chemically while he was transported; correct?

21 ATTORNEY KANTER: Objection; misstates testimony.

22 He told you about putting him on the gurney.

23 You can answer.

24 ATTORNEY NISENBAUM: Q. Put him on the gurney;
25 correct?

1 A. Correct. My intentions were to make it as safe as
2 possible for everybody involved while we get him on the
3 gurney, take off the handcuffs, get him on my restraints,
4 and then get him in the back of the ambulance.

5 After 17 years of experience doing this, I -- as
6 soon as we take off the handcuffs for patients who, for
7 whatever reason, they start becoming more and more agitated,
8 and then it becomes a lot more dangerous for everybody
9 involved to try to restrain them on the gurney. So that was
10 the reason I gave him the Versed, was for all of our safety.

11 Q. Was your intention to get him on the gurney and
12 then take off the handcuffs?

13 ATTORNEY KANTER: Objection; lacks foundation that
14 he would have anything to do with the handcuffs.

15 But you can answer.

16 THE WITNESS: My intention was get him on the
17 gurney, restrain his legs to my gurney, and then have the
18 Richmond police officers take off their handcuffs.

19 As paramedics, we don't carry handcuffs keys. And
20 it's their equipment -- we're not familiar with their
21 equipment, and so they have to be in charge of that.

22 So take off the handcuffs and then restrain both
23 of his arms into my restraints.

24 ATTORNEY NISENBAUM: Q. Okay. "Excessive single
25 doses or rapid intravenous administration may result in

1 respiratory depression, airway obstruction, and/or arrest."

2 I was reading that from the manufacturer of
3 midazolam; the prescribing information.

4 Do you agree with that?

5 ATTORNEY KANTER: Objection; it's an incomplete
6 hypothetical; vague and ambiguous; overly broad; and calls
7 for expert opinion testimony.

8 You can answer the best you can.

9 THE WITNESS: I'm sure that this medication has
10 been known to do that in certain people -- certain
11 percentage of the population.

12 ATTORNEY NISENBAUM: Q. Well, it depends on how
13 it's administered; correct?

14 ATTORNEY KANTER: Objection; incomplete
15 hypothetical; vague and ambiguous; and overly broad.

16 I'm not sure what the -- anyway.

17 You can answer if you're able to answer that.

18 THE WITNESS: Say it again, please?

19 ATTORNEY NISENBAUM: Q. It depends on how the
20 midazolam is administered.

21 ATTORNEY KANTER: Same objections.

22 And what's the "it" you're referring to? I think
23 that's the problem.

24 But go ahead.

25 THE WITNESS: If you rapidly push midazolam

1 intravenously, it can have negative side effects.

2 ATTORNEY NISENBAUM: Q. Right.

3 Including all of the ones we talked about; right?

4 ATTORNEY KANTER: Objection; vague and ambiguous;
5 overly broad.

6 You can answer.

7 THE WITNESS: I suppose so.

8 ATTORNEY NISENBAUM: Q. Respiratory depression, up
9 to and including death; correct?

10 A. I suppose so.

11 Q. Okay. And so again, you knew that at the time
12 when this incident happened. We've talked about that. This
13 was a person who was complaining -- who you heard say that
14 he was having breathing problems.

15 Are there other alternatives to midazolam for
16 chemical restraints?

17 A. Not that Contra Costa County EMS agency provides
18 us -- or provides AMR --

19 Q. So --

20 (Reporter clarification.)

21 THE WITNESS: "Provides."

22 Not that Contra Costa County EMS agency allows AMR
23 to use.

24 ATTORNEY NISENBAUM: Q. Is there a particular
25 weighing when you decide to give a person midazolam with

1 respect to the risk of it and the benefit of it? How do you
2 make the determination?

3 ATTORNEY KANTER: Objection; vague and ambiguous;
4 lacks foundation; calls for expert opinion; overly broad.

5 If you under- -- I'm not sure I understand the
6 question, but if you do, go ahead.

7 THE WITNESS: I don't really understand the
8 question.

9 ATTORNEY NISENBAUM: Q. Well, is it true that the
10 medical standard of care requires that the benefits of a
11 medical intervention outweigh the risk?

12 ATTORNEY KANTER: No, he's not going to answer
13 that question. That's calling for retrospective expert
14 opinion testimony.

15 ATTORNEY NISENBAUM: Q. Based on his training --

16 ATTORNEY KANTER: No --

17 ATTORNEY NISENBAUM: Q. -- when you make a -- when
18 you make a decision, based on your training, to administer a
19 medicine, are you trained to consider the benefit of the
20 medical intervention and the risk carried by the medical
21 intervention?

22 A. Yes.

23 Q. Okay. And how do you make that decision?

24 A. It's all based on the specific situation that
25 whatever medication we choose to administer calls for.

1 Q. Okay. It's fair to say that some medications
2 carry risk; right?

3 A. Yes.

4 Q. Midazolam is one of them; correct?

5 A. Correct.

6 Q. Okay. So when you administer midazolam, are you
7 trained to consider the risk of the midazolam itself
8 compared to the benefit of what you're trying to achieve
9 with it?

10 ATTORNEY KANTER: Objection; asked and answered.
11 He just answered that same question. You're just
12 repeating yourself now.

13 ATTORNEY NISENBAUM: He didn't.

14 ATTORNEY KANTER: You can answer it again.

15 ATTORNEY NISENBAUM: Q. Go ahead.

16 A. Yes.

17 Q. Okay.

18 So the question, then, is how do you -- how do you
19 make that assessment?

20 ATTORNEY KANTER: It's an incomplete hypothetical;
21 it's vague and ambiguous; overly broad.

22 I feel like you just answered that question, but
23 you can --

24 ATTORNEY NISENBAUM: I did not -- that was not an
25 answer.

1 ATTORNEY KANTER: Go ahead and answer the question
2 again.

3 THE WITNESS: Like I said before, it's based on
4 each situation, and each call we go out on is different from
5 the one before.

6 With that being said, 95 percent of the patients I
7 have had that have been in handcuffs -- when we get them on
8 a gurney, like I said -- as soon as we take off those
9 handcuffs, they tend to start fighting us again, making it
10 dangerous for everybody involved.

11 ATTORNEY NISENBAUM: Q. 95 percent?

12 A. Yes. Ninety -- 95.

13 Most of the patients I've had in handcuffs, when
14 the handcuffs have been taken off, they have started
15 fighting the first responders trying to restrain them to the
16 gurney.

17 Q. Okay. And how many of these people have calmed
18 down very, very substantially to the point where they were
19 no longer aggressive before the handcuffs came off?

20 ATTORNEY KANTER: Objection; argumentative; vague
21 and ambiguous; incomplete hypothetical.

22 You can answer if you can.

23 THE WITNESS: I would say most of my patients for
24 these particular situations.

25 ATTORNEY NISENBAUM: Q. So most of them, they're

1 calm, and then you get the cuffs off and then they start
2 fighting; right?

3 A. Correct.

4 Q. So the -- of course, you've got several officers
5 that are with you. You're not alone; right?

6 ATTORNEY KANTER: Well, objection; vague as to
7 time.

8 Are we talking about now or these prior
9 situations?

10 ATTORNEY NISENBAUM: Q. In this incident involving
11 Mr. Gutzalenko, you had several officers with you; correct?

12 A. Correct. I can't remember how many, though.

13 Q. Okay. But you had several there.

14 So if he did become combative, then you would have
15 dealt with that with the officers; correct?

16 ATTORNEY KANTER: Objection; vague as to where
17 you're talking about. It's on the street, or in the
18 paramedic ambulance?

19 ATTORNEY NISENBAUM: Q. Wherever.

20 After you put him on the gurney and you take off
21 the cuffs, you had enough officers to deal with him;
22 correct?

23 ATTORNEY KANTER: I think you mis- -- anyway.
24 Go ahead and answer.

25 THE WITNESS: It's hard to tell. Sometimes the

1 amount of officers and the fire department personnel we have
2 on scene is enough, and sometimes it's not.

3 ATTORNEY NISENBAUM: Q. If Mr. Gutzalenko was
4 actually unconscious, would you have been able to inject him
5 with midazolam?

6 ATTORNEY KANTER: Objection; vague and ambiguous;
7 may call for speculation.

8 I'm not even sure -- are you asking if he had --
9 anyways.

10 Calls for expert opinion testimony.

11 If you understand the question, you can go ahead
12 and answer it.

13 THE WITNESS: If he was unconscious, he's not
14 going to be physically or mentally able to do anything.

15 ATTORNEY NISENBAUM: Q. Okay. And so there would
16 have been no reason to inject him with midazolam if he were
17 unconscious; is that right?

18 A. If he was truly unconscious, yes.

19 Q. Okay. Well, what if he was only very close to
20 unconscious?

21 ATTORNEY KANTER: Objection; vague and ambiguous;
22 overly broad --

23 ATTORNEY NISENBAUM: Q. Or -- (simultaneous
24 talking; inaudible.)

25 ATTORNEY KANTER: -- (Simultaneous talking;

1 inaudible.)

2 THE REPORTER: I'm sorry. I'm sorry. I'm sorry.

3 I think -- yeah, go ahead.

4 Let's everyone talk one at a time, please.

5 ATTORNEY KANTER: Well, I was.

6 ATTORNEY NISENBAUM: Q. Assume he is a 4 or a 5 on
7 the Glasgow Coma Scale -- would you then be able to inject
8 him?

9 A. Yes.

10 ATTORNEY KANTER: Incomplete hypothetical.

11 Go ahead.

12 THE WITNESS: Yes.

13 ATTORNEY NISENBAUM: Q. All right. Is there a
14 cutoff of when you can inject someone with midazolam, as you
15 understand it?

16 ATTORNEY KANTER: I don't know -- vague and
17 ambiguous as to what you mean by "cutoff."

18 ATTORNEY FINE: Join.

19 ATTORNEY KANTER: Calls for expert opinion
20 testimony.

21 If you understand, you can answer.

22 THE WITNESS: It's been a long time since I
23 studied those protocols, so I can't give you an honest
24 answer.

25 I believe it's with a GCS of less than 13, I

1 think, but I'm not 100 percent sure.

2 ATTORNEY NISENBAUM: Q. So no midazolam -- your
3 best recollection is no midazolam if it's a Glasgow Coma
4 Scale of less than 13?

5 A. I believe so.

6 Q. Okay. And 13 -- what is the clinical presentation
7 of 13?

8 A. Still alert. Not necessarily able to verbally
9 express themselves. Still have some motor function. Might
10 have less than normal motor function.

11 It depends on what the numbers fall on the -- the
12 AVPU Scale and the GCS.

13 Q. Are you familiar with the American College of
14 Emergency Physicians?

15 A. I'm familiar with them.

16 Q. ACEP or something like that?

17 A. I'm not sure of who they are, but I...

18 Q. Okay. Looking at the treatment guideline that I
19 showed you -- it's not signed. It's not signed by a doctor.

20 Have you seen treatment guidelines that are signed
21 by doctors?

22 A. Not in our protocol book.

23 Q. Do you agree that it is important to know when not
24 to give a medication?

25 A. Yes.

1 Q. Okay. When is midazolam contraindicated?

2 ATTORNEY KANTER: Objection; calls for expert
3 opinion testimony.

4 ATTORNEY NISENBAUM: Q. Based on your training.

5 ATTORNEY FINE: It's also asked and answered.

6 ATTORNEY KANTER: I'll join.

7 ATTORNEY NISENBAUM: Q. Go ahead.

8 A. (To Attorney Kanter.) Can I answer?

9 Q. Yeah.

10 ATTORNEY KANTER: If you can.

11 THE WITNESS: When somebody is not breathing; when
12 somebody doesn't have a pulse; if suspected opioids are
13 onboard...

14 ATTORNEY NISENBAUM: Q. Anything else?

15 A. There is a bunch of different reasons. I can't
16 list them all here.

17 Q. Okay. You've told me as much as you can remember?

18 A. For the most part, yes.

19 Q. Is there a reason why you didn't sterilize the
20 area with alcohol where you injected Mr. Gutzalenko?

21 A. I don't remember.

22 Q. Normally that's something you're supposed to do;
23 right?

24 A. For the most part, yes.

25 Q. Okay.

1 A. I don't remember if I did or did not.

2 Q. Well, I don't -- and I know you do, but I can show
3 you.

4 Share my screen.

5 I'm going to hit Play. We're at, I think, 7:27.

6 (Playing designated video file, Exhibit 5.)

7 ATTORNEY NISENBAUM: Q. Pausing at 7:48, just at
8 the end of the injection.

9 It's fair to say you did not sterilize the area
10 where you injected him?

11 A. Correct.

12 Q. Okay. Why not?

13 ATTORNEY KANTER: Objection; asked and answered.
14 You can answer it again.

15 THE WITNESS: Because a lot of times in these
16 emergent situations it's just an extra step and it takes
17 away time.

18 ATTORNEY NISENBAUM: Q. Okay. Well, I take it
19 it's just a quick swab; right?

20 A. Mm-hmm. For the most part --

21 ATTORNEY KANTER: Objection; argumentative.
22 You can answer.

23 THE WITNESS: For the most part, yes.

24 ATTORNEY NISENBAUM: Q. And you have those swabs
25 stored in your ambulance somewhere; right?

1 A. Yes.

2 Q. Are they pretty soaked in alcohol?

3 A. Yes.

4 Q. Okay. So how hard is it?

5 ATTORNEY KANTER: Objection; argumentative --

6 THE WITNESS: It's not hard.

7 ATTORNEY KANTER: -- vague and ambiguous.

8 You can answer.

9 THE WITNESS: Not hard.

10 ATTORNEY NISENBAUM: Q. How much time does it
11 take?

12 ATTORNEY KANTER: Incomplete hypothetical.

13 You can answer.

14 THE WITNESS: Thirty seconds.

15 ATTORNEY NISENBAUM: Q. Thirty seconds to grab a
16 swab?

17 A. No. Longer than that because -- well, yeah.
18 Thirty seconds.

19 Q. Okay. Given that you're going back to the
20 ambulance already to get the -- get the syringe and draw out
21 the midazolam, what do you have to do in order to get the
22 swab?

23 A. Just get it from where we store it in the
24 ambulance.

25 Q. Okay. And where is it stored in the ambulance?

1 Is it easily accessible?

2 A. Yes.

3 Q. So is it fair to say it would take you, like, 5 or
4 10 seconds maybe?

5 A. Yes, depending on where it is in the ambulance.

6 Q. Okay. Well, where was it in this ambulance?

7 A. They're stored in multiple locations.

8 Q. Are they stored in multiple locations in the same
9 ambulance?

10 A. Paramedics set up the back of their ambulance how
11 they want to. But generally speaking, the medications and
12 equipment are stored in specific cabinets so each ambulance
13 is supposedly set up the same way.

14 Sometimes the alcohol swabs and some other
15 often-used items get moved around to make them more or less
16 accessible.

17 Q. Okay. Was this your regular ambulance?

18 A. Yes.

19 Q. All right. Where did you keep it?

20 A. Like I said, multiple locations. We had them in
21 our equipment bag; we had them in our glucometer; we had
22 them on our bench seat; we had them in our cabinets.

23 Q. But all at the same time; right? You didn't
24 just -- they didn't move here or there and the other; you
25 had -- do you keep them in bags or jars?

1 A. No, they're only -- they're individually wrapped
2 and they usually come in a box.

3 Q. Okay. So -- like, those little boxes, then.

4 A. Yeah.

5 Q. I'm thinking of, like, little boxes of wipes that
6 are, like, individually packaged in foil.

7 Is that how they're packaged?

8 A. For the most part, yes.

9 Q. Okay. All right. So while you were getting the
10 midazolam, you would have just reached for one of those
11 packages and grabbed out one of the foil packs; right?

12 A. I could have.

13 Q. Okay. Again, you would have to think about it,
14 but in this case you didn't think about it; right?

15 ATTORNEY KANTER: Objection; misstates prior
16 testimony; argumentative.

17 THE WITNESS: Correct.

18 ATTORNEY NISENBAUM: Q. Okay. The same way you
19 didn't think about aspirating the plunger; right?

20 ATTORNEY KANTER: Objection; misstates prior
21 testimony; argumentative.

22 THE WITNESS: I didn't aspirate the plunger
23 because, like I said, it's been a practice that has been
24 so -- not practiced for quite some time.

25 ATTORNEY NISENBAUM: Q. So is there anywhere that

1 I could look that would say that? For example, the AMR
2 West. Do they have -- or AMR itself; either one.

3 Do they have some publication or some written
4 document where I would see that? How do I verify that?

5 ATTORNEY FINE: Asked and answered.

6 ATTORNEY KANTER: Join.

7 ATTORNEY NISENBAUM: I didn't.

8 ATTORNEY NISENBAUM: Q. And the answer
9 was --

10 ATTORNEY KANTER: Speculation as well.

11 ATTORNEY NISENBAUM: Q. -- the answer was no, but
12 it strikes me that it's a significant change in policy and
13 there ought to be something that's written about it
14 somewhere.

15 ATTORNEY KANTER: What is your question?

16 ATTORNEY NISENBAUM: Q. My question is where do I
17 find that, if you know?

18 ATTORNEY KANTER: Same objections.

19 You can answer if you're able.

20 ATTORNEY FINE: Join.

21 THE WITNESS: I believe I already answered that
22 when you asked that same question earlier today.

23 It's nothing that was in a publication; it's what
24 is discussed person-to-person in a classroom setting.

25 ATTORNEY NISENBAUM: Q. So it is, to your

1 knowledge, practice and training but nothing that's written
2 down?

3 ATTORNEY FINE: Asked and answered.

4 ATTORNEY KANTER: And join.

5 THE WITNESS: Yes.

6 ATTORNEY NISENBAUM: Q. I didn't get the answer.

7 A. Yes.

8 Q. Okay. If I understood correctly when you
9 initially -- when this initially happened, you actually
10 thought it could have been the midazolam; right?

11 ATTORNEY KANTER: Objection; vague and ambiguous.

12 I don't have any idea what you're asking him.
13 What's the "it"?

14 ATTORNEY NISENBAUM: It doesn't matter what you
15 think; it --

16 ATTORNEY KANTER: It does, because you're asking
17 if, basically -- it matters.

18 Do you understand the question?

19 THE WITNESS: I don't understand the que- -- can
20 you ask it again?

21 ATTORNEY NISENBAUM: Q. Okay.

22 On the day of this incident, after Mr. Gutzalenko
23 became essentially pulseless, breathless, unresponsive, a 3
24 on the Glasgow Coma Scale -- you thought one possibility was
25 that he had had an adverse reaction or overdose of the

1 midazolam; is that right?

2 ATTORNEY KANTER: I'll object it lacks foundation
3 that he even had such a thought. Speculation.

4 ATTORNEY NISENBAUM: He already testified that he
5 did.

6 ATTORNEY KANTER: I disagree.
7 You can answer if you're able.

8 THE WITNESS: I wasn't 100 percent sure what
9 caused him to go into cardiac arrest.

10 ATTORNEY NISENBAUM: Q. Right. I understand that.
11 But one thought that you had was that it could have been the
12 midazolam you gave him; right?

13 A. It could have been the midazolam I gave him. It
14 could have been the illegal substances that he had in his
15 system. It could have been a heart attack. It could have
16 been a bunch of different things that caused him to go into
17 arrest.

18 Q. Right. Okay.

19 But again, you had -- you did have a specific
20 thought that it could have been the midazolam, but at no
21 point did you communicate that to anyone, until today;
22 right?

23 A. I don't see what the point of communicating that
24 to anybody would matter.

25 Q. So it could be looked into, perhaps?

1 A. But --

2 Q. Why wouldn't it matter?

3 A. I didn't hide the fact that I gave midazolam. It
4 was all in my PCR.

5 Q. I know. Look, I've been doing this too long.
6 I've seen way too much nonsense from people that, you know,
7 do things that are inexplicable.

8 Your job, at the end of the day, is to provide the
9 information -- I know you provided the information about the
10 midazolam. I don't know whether or not you had a duty to
11 tell people that you thought maybe that was the issue, but I
12 do know that none of -- you know, the coroner didn't
13 consider it. I don't see, you know, a lot of other -- well,
14 my question is -- well -- and you testified at the coroner's
15 inquest; right?

16 Do you remember that?

17 A. I remember testifying there.

18 Q. Okay. And you listened to the coroner who gave
19 his analysis; correct?

20 A. Correct. But I can't remember exactly what he --
21 everything he said.

22 Q. I understand.

23 But I do know that you talked about the Versed and
24 you said as described -- you gave the drug that was
25 described by the coroner.

1 That was your testimony. I know you listened to
2 it, so let me...

3 Was it your decision as to where Mr. Gutzalenko
4 would be going -- assuming that he didn't die, was it your
5 decision as to where he would be going?

6 A. Yes.

7 Q. Okay. Explain that to me.

8 A. As a paramedic and the only paramedic with the
9 highest medical authority -- so based on how patients
10 present and what I think is going on with them -- I make the
11 decision of which hospital they go to.

12 Q. Okay. So you make the -- he was going to be going
13 to the hospital no matter what, after you arrived; is that
14 fair to say?

15 ATTORNEY KANTER: Objection; calls for
16 speculation; lacks foundation; it's an incomplete
17 hypothetical.

18 You can answer.

19 ATTORNEY FINE: Join.

20 THE WITNESS: I felt like he needed to go to a
21 hospital. He appeared to look like he needed to go to a
22 hospital.

23 ATTORNEY NISENBAUM: Q. Okay. Do you know if he
24 was going to the hospital at the direction of the police?

25 ATTORNEY FINE: Calls for speculation; lacks

1 foundation.

2 THE WITNESS: The police officers do not make the
3 decision on where a patient -- which hospital patients go
4 to.

5 ATTORNEY NISENBAUM: Q. I understand they don't
6 make the decision on which hospital, but the fact that he
7 was going to go to a hospital -- was that at the direction
8 of the police?

9 ATTORNEY FINE: Same objection; it misstates prior
10 testimony.

11 THE WITNESS: No, they didn't tell me where to
12 take him.

13 ATTORNEY NISENBAUM: Q. Was the -- all right.
14 Was it your understanding that he was to be taken
15 to a hospital regardless of which hospital?

16 ATTORNEY KANTER: Objection; misstates testimony;
17 it's been asked and answered.

18 He decided.

19 ATTORNEY FINE: Join.

20 ATTORNEY NISENBAUM: Q. Okay, you decided? So it
21 was solely your choice to take Mr. Gutzalenko to the
22 hospital?

23 ATTORNEY KANTER: Asked and answered.

24 ATTORNEY FINE: Join.

25 ATTORNEY KANTER: Answer it again.

1 THE WITNESS: Yeah, he appeared to need medical
2 care further than what I could provide for him on scene.

3 ATTORNEY NISENBAUM: Q. Okay. A 5150 -- he would
4 be going to the hospital for that; correct?

5 ATTORNEY KANTER: Objection; incomplete
6 hypothetical.

7 ATTORNEY FINE: Lacks foundation.

8 ATTORNEY KANTER: Yeah. Join.

9 THE WITNESS: It depends on if -- what else is
10 going on with a person at the time.

11 ATTORNEY NISENBAUM: Q. Okay. Well, how so?

12 A. Some 5150s, if they're not -- don't have any other
13 medical issues going on, they can go straight to the
14 psychiatric emergency services at Contra Costa County
15 Hospital.

16 If they have another underlying medical issue that
17 needs addressed, then we take them to an emergency room.

18 Q. Okay. You were asked at the coroner's inquest:

19 "Question. Did you in any way assist in
20 restraining, or attempting to restrain, or are
21 you just doing the best you can with his hand?

22 "Answer. Yes. So I just addressed the right
23 hand first, and like I said, he was becoming
24 more and more agitated and aggressive. And
25 when he knocked off the police officer's body

1 cam, that's when I decided to go back to my
2 ambulance, draw up my medication to Versed --
3 or to help calm him down, so to speak."

4 So when you said yes, what were you answering
5 "yes" to?

6 A. I believe it was the question to me -- the reason
7 why -- one of the reasons why I chose to go get Versed; that
8 I chose to restrain him chemically.

9 Q. Okay. All right. So when you arrived, the police
10 were in the process of restraining Mr. Gutzalenko; correct?

11 A. Yes.

12 ATTORNEY FINE: Belatedly, vague and ambiguous.

13 ATTORNEY NISENBAUM: Q. And you went to go -- and
14 that restraint continued until you administered the Versed;
15 correct?

16 ATTORNEY FINE: Vague and ambiguous; overbroad.

17 THE WITNESS: Correct.

18 ATTORNEY NISENBAUM: Q. Okay. And then he was
19 chemically restrained; correct?

20 A. Yes, I chemically restrained him.

21 Q. Okay. And again, when you -- well, let me ask you
22 this.

23 When you arrived, were the police trying to
24 handcuff him, if you could tell?

25 A. When I first got on scene?

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

1 Q. Yes.

2 A. No. They did not handcuff him until after I went
3 back to the ambulance.

4 Q. Okay. When you left, were they trying to handcuff
5 him? When you left to go to the ambulance, were they trying
6 to put handcuffs on?

7 A. At the time that I left, they were not putting
8 handcuffs on him.

9 Q. Okay.

10 ATTORNEY NISENBAUM: All right. Give me five
11 minutes. I'm going to stop my Share -- or stop my video and
12 audio.

13 ATTORNEY FINE: So a five-minute break? 3:15?

14 ATTORNEY KANTER: Yeah, sounds right.

15 ATTORNEY FINE: Okay.

16 ATTORNEY NISENBAUM: Correct.

17 (Recess: 3:10 P.M. to 3:14 P.M.)

18 ATTORNEY NISENBAUM: All right. I'm ready when
19 you guys are.

20 THE REPORTER: I'm back on the record.

21 ATTORNEY NISENBAUM: Although I have a lot more
22 questions, most of them probably would be legitimately
23 objectionable, as opposed to any of the questions I've asked
24 today. So I'm done today. Thank you.

25 ATTORNEY FINE: I've got a few, if you don't mind.

1 ATTORNEY KANTER: Go ahead.

2 ATTORNEY FINE: All right. Thank you.

3 EXAMINATION

4 BY ATTORNEY FINE:

5 Q. Mr. Richardson, thank you for your time today. I
6 know it's been a long day, so I'll try to be brief.

7 You said, I believe, that it was your sole
8 decision to administer the Versed to Mr. Gutzalenko.

9 Am I correct about that?

10 A. Correct.

11 Q. Okay. And so none of the police officers at the
12 scene told you to administer Versed to Mr. Gutzalenko; is
13 that correct?

14 A. Nobody at the scene ordered me to give the Versed.

15 Q. And none of the police officers suggested that you
16 administer Versed to Mr. Gutzalenko; is that correct?

17 A. I don't remember any officers suggesting that to
18 me.

19 Q. Thank you.

20 And where is the Versed kept in the ambulance?
21 Where specifically?

22 A. It's kept in a secured box. It has to be in a
23 double-locked vault, so to speak.

24 Q. Okay. And how is that lock opened?

25 A. By two separate keys that I carry.

1 Q. And you -- okay.

2 And at the scene of the incident, to your
3 knowledge, were you the only one there that had keys to that
4 vault? That locked vault?

5 A. Yes, I was.

6 Q. Okay.

7 A. I would probably call it a cabinet instead of a
8 vault because it's not very secure. Other than just the two
9 locks on it.

10 Q. Okay. And the keys are the only way -- the two
11 keys are the only way to open that container; is that
12 correct?

13 A. Correct.

14 Q. Okay. When you were -- let's go back to the time
15 that you were bandaging Mr. Gutzalenko's right hand.

16 I believe you said he was not handcuffed yet;
17 correct?

18 A. Correct.

19 Q. Did you perceive that at that time he began to
20 resist what you were doing: your attempt to bandage his
21 hand?

22 A. Yes, he did.

23 Q. Can you describe to me what he was doing? What
24 resistance did you perceive?

25 A. Sometimes he would pull -- try to pull his hand

1 away. Sometimes he would try to grab my hand to prevent me
2 from wrapping his. Sometimes he would grab at the bandaging
3 material that I had there to wrap his hand.

4 Q. And was he also sort of thrashing around his
5 limbs?

6 A. He appeared to be, yes.

7 Q. And would you agree that this was -- this was sort
8 of violent resistance? He was exerting a lot of energy?

9 ATTORNEY NISENBAUM: I'm going to object to this
10 as leading. Although I know he's not your client --

11 ATTORNEY FINE: Yeah, he's not my witness.

12 ATTORNEY NISENBAUM: I get that, but you are
13 aligned. You are aligned.

14 ATTORNEY FINE: That's your opinion. That's fine.

15 ATTORNEY NISENBAUM: You know.

16 Anyway, objection; leading.

17 ATTORNEY FINE: Q. Okay. Go ahead and answer.

18 A. Yeah, he did appear to be, you know, violent and
19 not following commands.

20 Q. Okay. And did you perceive how the officers
21 responded to that resistance at all while you were bandaging
22 his hand?

23 A. Can you clarify, please?

24 Q. Sure.

25 Did it appear to you as you were bandaging the

1 hands, that the officers were also being aggressive with
2 Mr. Gutzalenko?

3 A. I don't think that they were being overly
4 aggressive with him. I think they were applying enough
5 restraint to keep everybody protected at that time.

6 Q. Okay. So just enough restraint without going
7 overboard? Is that fair to say?

8 A. Yes.

9 Q. And you actually saw Mr. Gutzalenko thrash so hard
10 at one point that he knocked one of the body-worn cameras
11 off one of the officers; is that correct?

12 A. That is correct.

13 ATTORNEY NISENBAUM: Objection; mischaracterizes
14 the evidence.

15 ATTORNEY FINE: Q. And it was at that point that
16 you saw Mr. Gutzalenko actually thrash so hard that he
17 knocked off one of the officer's body-worn cameras, that you
18 decided it was going to be unsafe to try to get him on a
19 gurney without a chemical restraint; is that correct?

20 A. Yes, that's one of the actions that made my
21 decision.

22 Q. That's all I've got.

23 Thank you very much for your time today. I really
24 appreciate it.

25 A. You're welcome.

DEPOSITION OF EMT DAMON RICHARDSON - VIDEOCONFERENCE

1 THE REPORTER: Anyone else?

2 ATTORNEY KANTER: Okay. We're all done.

3 ATTORNEY NISENBAUM: All right. Fantastic.

4 THE REPORTER: Can I get orders for the transcript
5 on the record, please, from the attorneys, starting with
6 Mr. Kanter?

7 ATTORNEY KANTER: Yes, I'll take an electronic
8 copy.

9 ATTORNEY FINE: Mr. Fine. Yes, please.

10 THE REPORTER: Thank you. I'm off the record.
11 (Whereupon, the deposition concluded at
12 3:20 P.M.)

13 --oOo--

14

15

16

17

18

19

20

21

22

23

24

25

REPORTER'S CERTIFICATE

I, Debra J. Skaggs, Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken remotely before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that pursuant to FRCP Rule 30(e)(1), before completion of the deposition, review of the transcript [] was [X] was not requested.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have subscribed my name on this 9th day of December, 2024.

/s/Debra J. Skaggs
DEBRA J. SKAGGS, CSR No. 7857

EXHIBIT 8

DEPOSITION OF LIEUTENANT DANIEL REINA - PMK - VIDEOCONFERENCE

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

--000--

IVAN GUTZALENKO, Deceased,)
through his Co-Successors in)
Interest, N.G. and N.I.G.,)
minors through their mother)
and Next Friend, Honey)
Gutzalenko, individually)
and as Co-Successors in)
Interest for IVAN GUTZALENKO,)
Deceased,)

Plaintiffs,)

vs.)

CITY OF RICHMOND, et al.,)

Defendants.)

CERTIFIED COPY

Case No.:
3:22-cv-02130-EMC

CERTIFIED COPY

VIDEOCONFERENCE

DEPOSITION OF LIEUTENANT DANIEL REINA - PMK

WEDNESDAY, SEPTEMBER 11, 2024

1:31 p.m. - 3:24 p.m.

REPORTED BY: DEBRA J. SKAGGS, CSR NO. 7857

DEPOSITION OF LIEUTENANT DANIEL REINA - PMK - VIDEOCONFERENCE

INDEX OF EXAMINATION

PAGE

PROCEEDINGS: 6

EXAMINATION BY

Attorney Cook 7

Attorney Fine 78

--o0o--

Appearance Page 3

Exhibit Page 4

Location 5

Reporter's Certificate 80

Disposition 81

Attorney's Notes 82

--o0o--

REMOTE APPEARANCES

FOR PLAINTIFF:

LAW OFFICES OF JOHN L. BURRIS
BY: JAMES COOK, ATTORNEY AT LAW
Airport Corporate Centre
7677 Oakport Street, Suite 1120
Oakland, California 94621
(510) 839-5200 Fax: (510) 839-3882
James.Cook@johnburrislaw.com

FOR DEFENDANTS CITY OF RICHMOND and OFFICERS HALL AND
TRAN and TAGORDA; ALSO PMK WITNESS REINA:

BY: NICHOLAS FINE, ATTORNEY AT LAW
ORBACH, HUFF & HENDERSON LLP
6200 Stoneridge Mall Road, Suite 225
Pleasanton, CA 94588
(510) 999-7908 Fax: (510) 999-7918
nfine@ohhlegal.com

FOR DEFENDANT AMERICAN MEDICAL RESPONSE:

BY: JACKIE CHING, ATTORNEY AT LAW
HINSHAW, MARSH, STILL & HINSHAW, LLP
12901 Saratoga Avenue
Saratoga, California 95070
(408) 861-6500 Fax (408) 257-6645
jching@hinshaw-law.com

ALSO PRESENT:

CRYSTAL MACKEY, Law Clerk,
LAW OFFICES OF JOHN L. BURRIS

--o0o--

INDEX TO EXHIBITS

LIEUTENANT DANIEL REINA

WEDNESDAY, SEPTEMBER 11, 2024

--o0o--

EXHIBITS

PLAINTIFF'S EXHIBITS:	PAGE
Exhibit 1	6 pages - Notice of Taking Deposition of Defendant PMK for the City of Richmond 16

--o0o--

DEPOSITION OF LIEUTENANT DANIEL REINA - PMK - VIDEOCONFERENCE

1 BE IT REMEMBERED that, pursuant to Notice on
2 Wednesday, September 11, 2024, commencing at the hour of
3 1:31 P.M., thereof; in their respective locations via
4 Zoom, as noticed by the attorneys for the Plaintiffs,
5 LAW OFFICES OF JOHN L. BURRIS, Airport Corporate Center,
6 7677 Oakport Street, Suite 1120, Oakland, California, was
7 before me, DEBRA J. SKAGGS, CSR No. 7857, a Certified
8 Shorthand Reporter, State of California, remotely
9 appeared.

10 LIEUTENANT DANIEL REINA,
11 sworn as a witness herein, appearing remotely; who, being
12 by me duly sworn or having affirmed, was examined and
13 testified as is hereinafter set forth.

14 --o0o--
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OF LIEUTENANT DANIEL REINA - PMK - VIDEOCONFERENCE

PROCEEDINGS

(Witness duly sworn.)

THE WITNESS: (Inaudible.)

THE REPORTER: I'm sorry?

THE WITNESS: I do.

Can you hear me?

ATTORNEY FINE: Yeah, I think the volume is kind
of...

THE WITNESS: Can you hear me now?

ATTORNEY FINE: It might just be your proximity to
the microphone.

THE WITNESS: Okay. Let me try one other thing.
Hold on.

ATTORNEY FINE: That's way better right there.

THE WITNESS: Right here?

ATTORNEY COOK: Yeah. Just move --

ATTORNEY FINE: Yeah.

THE WITNESS: Okay.

And for the record, yes, I do.

THE REPORTER: Will the witness state the city and
state where you're located taking your deposition, please.

THE WITNESS: City of Richmond, State of
California.

THE REPORTER: Thank you.

Will the attorneys state their appearances, who

DEPOSITION OF LIEUTENANT DANIEL REINA - PMK - VIDEOCONFERENCE

1 they represent, and anyone else in the room with them as a
2 party to the case, please.

3 ATTORNEY COOK: James Cook and Crystal Mackey for
4 the Plaintiff. James Cook is in Minneapolis, Minnesota. We
5 represent the Plaintiffs. Crystal is our law clerk for
6 Burris's office.

7 ATTORNEY FINE: Nick Fine for the City of
8 Richmond; Officers Mark Hall, Tom Tran, and Cedric Tagorda;
9 as well as the deponent, Lieutenant Daniel Reina. And there
10 are no other parties in the room with me.

11 ATTORNEY CHING: Jackie Ching on behalf of
12 Defendant AMR. No one else is present in this room.

13 THE REPORTER: Okay. You can begin.

14 ATTORNEY COOK: Okay. Excellent.

15 EXAMINATION

16 BY ATTORNEY COOK:

17 Q. Okay. So -- let me see -- let me get started
18 here.

19 Lieutenant Reina, if you can state your name for
20 the record and spell your last name.

21 A. Yes. Daniel Reina. Last name is spelled
22 R-e-i-n-a.

23 Q. Okay. Where are you currently employed?

24 A. For the Richmond Police Department.

25 Q. And what's your current position and rank?

1 A. Currently I'm the Lieutenant in charge of the
2 Administrative Bureau.

3 Q. Just a moment. Let me just move some things
4 around here.

5 Have you ever been deposed before?

6 A. No.

7 Q. Okay. So I'm going to give you some admonitions
8 for you to -- just to sort of remember before we get going
9 on the deposition. But -- so, you know, you just took an
10 oath to -- and basically, even though we're not in a
11 courtroom -- you know -- you took an oath to tell the truth,
12 and it carries the same kind of, you know, weight as if you
13 were testifying -- the only difference is we just don't have
14 a judge here today.

15 Does that make sense to you?

16 A. Yes.

17 Q. Okay. So you understand your obligation to tell
18 the truth?

19 A. Yes.

20 Q. Is there any reason why you can't testify
21 truthfully today? For instance, are you under the influence
22 of any drugs, or alcohol, or prescription drugs that would
23 keep you from testifying?

24 A. No, I'm not.

25 Q. Okay. And -- okay. So I think I sort of said

1 this, but there is nothing that would keep you from
2 testifying truthfully today; is that correct?

3 A. Correct.

4 Q. Okay. Do you intend to tell the truth?

5 A. Yes.

6 Q. Okay. So -- again, even though we're not in a
7 courtroom, the reporter is taking down everything that we
8 say. And so it's important for you to answer audibly and
9 speak clearly and slowly -- we don't want to talk over each
10 other -- so that we can create a clean record.

11 Does all of that make sense to you?

12 A. Yes.

13 Q. Okay. So you have two attorneys here, so from
14 time to time they're going to object, just like you see on
15 TV, like on Law & Order or something, where they stand up
16 and object. I mean, they're not going to stand here, but
17 they'll object. And that's so that they can, you know, make
18 the objection to my question on the record. Regardless, I'm
19 entitled to your answer unless your attorney instructs you
20 not to answer.

21 Does that make sense to you?

22 A. Yes.

23 Q. Okay. At some point you're going to receive a
24 transcript of the deposition of your testimony today, and
25 you can make changes to it. Okay? But if you do, and this

1 case goes to trial, I can use this to do what's called
2 impeach you, you know, if you change something that's
3 opposite to what you said when you testified.

4 Does that make sense to you?

5 A. Yes.

6 Q. All right. So -- you know -- I don't want you to
7 guess on anything. You can make estimates. And the
8 difference between a guess and an estimate is you can -- you
9 can, you know, guess the size of the table, you know, or
10 estimate the size of the table that you're sitting at right
11 now, but you can only guess the size of the table that I'm
12 sitting at right now.

13 Does that make sense?

14 A. Yes.

15 Q. Yeah, it's based on what you, you know, know
16 personally. Okay? So, you know, you don't want to guess if
17 you don't have personal knowledge of it.

18 Does that make sense?

19 A. Yes.

20 Q. Okay. You can take a break at any time, but what
21 I ask is that if there is a question pending, that you
22 answer the question before you take a break. Okay?

23 A. Okay.

24 Q. Does that make sense?

25 A. Yes.

1 Q. All right. And, you know, you can't ask for
2 coaching if you take a break. I mean, I can ask you if you
3 were coached; I can't ask you about the substance of your
4 conversation with the attorney, but you're not supposed to
5 be coached.

6 Does that make sense?

7 A. Yes.

8 Q. Okay. So you're being -- you understand that I'm
9 asking you questions, you're being deposed, so I can ask you
10 questions about the case of Gutzalenko versus Richmond?

11 A. Correct. Yes.

12 Q. Okay. And you understand that the date giving
13 rise to this incident was approximately March 10, 2021, at
14 approximately 10:35 A.M.?

15 A. Yes.

16 Q. And this incident involved the death of Ivan
17 Gutzalenko. Is that your understanding?

18 A. Yes.

19 Q. The location of this incident was approximately --
20 well, there was an address -- but the Richmond Furniture
21 Store, which is located at 1260- -- 12669 San Pablo Avenue
22 in Richmond.

23 Does that ring a bell?

24 A. I don't know if that's the exact address, but yes,
25 I know it's on San Pablo Avenue. In or about that area.

1 Q. Okay. Of Richmond; right?

2 A. Correct.

3 Q. All right. And the officers that were --
4 responded, you know, in the incident included Officer Tom
5 Tran, Officer Cedric Tagorda, and Mark Hall.

6 Is that your understanding?

7 A. Yes.

8 Q. Okay. So throughout the deposition -- throughout
9 this deposition, I'm going to refer to the incident, and
10 basically I'm talking about the events giving rise to this
11 particular lawsuit.

12 Does that make sense to you?

13 A. Yes.

14 Q. What's your -- let's talk a little bit about your
15 credentials and so on.

16 What's your highest level of education?

17 A. A bachelor's degree.

18 Q. A bachelor's degree in what?

19 A. Interdisciplinary studies.

20 Q. And did you -- I mean, I'm assuming that you
21 completed the police academy?

22 A. Yes.

23 Q. Okay. So you became POST-certified, and you're
24 sworn and all that, right?

25 A. Yes.

1 Q. And then did you -- you're a lieutenant. Did you
2 take -- do any special training for this particular
3 position?

4 A. Are you --

5 Q. Aside from regular police department training?

6 A. Are you referring to for the rank of lieutenant?

7 Q. Yes.

8 A. Yeah. I mean, I attended a POST management course
9 once I was promoted to the rank of lieutenant. I've taken
10 several courses throughout my career. Were they directly
11 related? No. But they were part of the POST curriculum.

12 Q. Okay. Any other special training for this
13 particular position today?

14 ATTORNEY FINE: It's vague as to "special
15 training."

16 ATTORNEY COOK: Q. Yeah. I mean, I'm just
17 wondering have you -- you know -- you were identified as the
18 PMK, so is there any other education or -- that's relevant
19 to this?

20 A. I --

21 ATTORNEY FINE: Vague.

22 Go ahead.

23 THE WITNESS: I think you want me to kind of
24 expound upon my career and what I've done? Is that --

25 ATTORNEY COOK: Q. Yes. Yes.

DEPOSITION OF LIEUTENANT DANIEL REINA - PMK - VIDEOCONFERENCE

1 A. Okay. If that's the case, I started in the police
2 department back in 2006 as a police officer attending a
3 police academy.

4 Graduated from that --

5 Q. I can't hear you. You're kind of breaking up.

6 A. Yeah, this connection seems to be bad.

7 Can you hear me now?

8 ATTORNEY FINE: So James, I hate to say it. I
9 think it might be on your end. I think Lieutenant Reina --

10 ATTORNEY COOK: Oh, it's my end?

11 ATTORNEY FINE: Yeah. Unless someone else
12 disagrees -- (Simultaneous talking; inaudible.)

13 ATTORNEY COOK: I'm going to turn off my video --

14 ATTORNEY FINE: (Simultaneous talking; inaudible.)

15 ATTORNEY COOK: No, I'm going to turn off my
16 video. It's probably me. I'll turn off my video.

17 ATTORNEY COOK: Q. All right. Go ahead.

18 That usually does the trick.

19 A. I attended a police academy and graduated from
20 that in 2006. From there I worked the streets. I went to
21 FTO training; graduated FTO. Went on to working patrol; did
22 that for about a year and a half on the streets of Richmond.
23 I then became a GATE detective for about four years. Then
24 transferred over to a narcotics detective for three years.
25 Then was a K-9 handler for a number of years; about three

1 years, three and a half years. Became an FTO instructor at
2 that time. In 2014 I became a Use of Force instructor for
3 the department. In 2017 I became a Firearms instructor for
4 the department. In about 2010 I became a SWAT team member
5 for the department. Part of that included being part of
6 their designated marksman unit. Promoted to the rank of
7 Sergeant in 2018. Attended POST-required supervisory
8 school. From there I became a SWAT team leader; still part
9 of the K-9 program as far as the K-9 coordinator.

10 I went on to get promoted -- and during that time
11 I was still a Use of Force instructor teaching the
12 department. I'm still a Firearms instructor teaching the
13 department. That never changed.

14 I went on to get promoted to the rank of
15 Lieutenant, and again, still oversee different collateral
16 assignments within the department.

17 And we can go into that if you'd like, or --
18 (Internet connection issue.)

19 THE REPORTER: Sorry, the screen froze on the
20 witness.

21 THE WITNESS: -- different collateral assignments
22 throughout my rank as Lieutenant, ranging from Use of Force
23 Review Board, Manager, Training Manager. So I've held
24 different, and currently hold different, collateral
25 assignments within the department.

1 ATTORNEY COOK: Q. Okay. Understood. Thank you.

2 I'm going to show you the deposition notice.

3 We'll mark this as Exhibit, what do we say, 1? Or however
4 you suggest we mark it.

5 THE REPORTER: 1 is good.

6 (Plaintiffs' Exhibit 1 marked
7 for identification.)

8 ATTORNEY COOK: Q. So you saw this deposition
9 notice today?

10 A. I see it, yes.

11 Q. Yeah, you've seen it -- okay. So you've seen
12 this.

13 So we sent this on, and then they -- you know, we
14 kind of -- the process is to go back and forth with the
15 attorneys, and then they say okay, we're going to identify a
16 person to answer, you know, these questions.

17 So you saw these categories -- these matters on
18 which you're going to be questioned; right?

19 A. Correct.

20 Q. Okay. And you've read through these? The use of
21 sedatives regarding, you know, sedatives as a restraint;
22 policies and procedures; statistical information; and then
23 we have some stuff about use of force at the bottom. And
24 you -- it sounds like you have extensive experience with the
25 use of force.

1 Just some questions about this.

2 So you understand -- I mean, you -- based on these
3 categories that you're looking at -- I mean, you -- you were
4 selected as the person most qualified or person most
5 knowledgeable; right? I mean, that's your understanding?

6 A. Yes.

7 Q. Okay. And is there any reason why you don't think
8 you can discuss any of these topics as the PMK today?

9 A. Yes, there is.

10 Q. Okay. What reason is that?

11 A. Well, as it relates to sedatives -- we have no
12 policy on sedatives; we don't administrate that; we have
13 no -- nothing to do with that type of stuff. So we have
14 no -- I am no expert in the administration of sedatives. We
15 have no policy on sedatives. So anything related to
16 sedatives, I would not be a person most knowledgeable in
17 that area. My guess is it would be some type of doctor;
18 medical professional.

19 Q. Okay. So basically for the first three, really,
20 and then also for 5 and -- well, let's talk about the first
21 three. You're saying that the department has no policy
22 regarding the use of sedatives as a restraint; is that
23 correct?

24 A. Correct.

25 Q. And then what about even -- is there any policy

1 with respect to assisting -- assisting, say, you know,
2 emergency technicians or emergency personnel -- emergency
3 medical personnel with administering sedatives?

4 A. Again, no policy on -- (Simultaneous talking;
5 inaudible.)

6 ATTORNEY FINE: (Simultaneous talking; inaudible.)

7 THE REPORTER: I'm sorry. Hold on.

8 The objection?

9 ATTORNEY FINE: Objection; vague as to
10 "assisting."

11 ATTORNEY CHING: And I'll join in that objection
12 as well. Jackie Ching.

13 ATTORNEY COOK: Q. Okay. Go ahead, Lieutenant.

14 A. Again, no policy.

15 Q. Okay. And then again, the same thing in terms of
16 statistical information about sedatives, using sedatives as
17 a restraint, and also information related to deaths or
18 injuries, you know, from sedatives.

19 Is there no -- there is no policy or statistical
20 information that's been gathered; is that what you're
21 saying?

22 A. Correct.

23 Q. Okay. Is there ever a situation when an officer
24 from the City of Richmond Police Department can request that
25 sedatives be used on an arrest subject?

1 ATTORNEY FINE: Incomplete hypothetical; vague and
2 ambiguous.

3 ATTORNEY COOK: Q. Go ahead, Lieutenant.

4 A. We don't -- we have no oversight on that. We
5 don't recommend that. That's all medical personnel's
6 responsibility. We don't have any role in that.

7 Q. Okay. Let me say -- when I say "assist" -- you
8 know -- let me kind of be more specific about that.

9 Is there -- are officers trained in any situation
10 where they would assist emergency medical personnel in
11 administering a sedative as a restraint?

12 And what I mean by that is, you know, where they
13 would, you know, help the EMT remove clothing or -- well,
14 let's start with that: help the EMT remove clothing.

15 ATTORNEY FINE: Vague and ambiguous; incomplete
16 hypothetical.

17 ATTORNEY CHING: Join.

18 ATTORNEY COOK: Q. Lieutenant?

19 A. We have no policy as it relates to sedatives or
20 administration of it.

21 Q. Okay. And again, to follow up on that same
22 question.

23 Any situation where -- you know, any policy or
24 procedure where a police officer would assist an EMT in
25 administering a sedative by restraining the arrest subject?

1 ATTORNEY FINE: Vague and ambiguous; incomplete
2 hypothetical; overbroad.

3 ATTORNEY CHING: I'll join the objection as well.

4 THE WITNESS: Again --

5 ATTORNEY COOK: Q. Go ahead, Lieutenant.

6 A. -- we have no procedures, no SOPs, no policy as it
7 relates to administering sedatives at all.

8 Q. Okay. So in a situation if a Richmond police
9 officer was to assist an EMT in the administration of a
10 sedative by either, you know, removing clothing or, you
11 know, some type of a physical restraint -- would this be
12 outside of, I guess, their training or department policy?

13 ATTORNEY FINE: Same objections.

14 ATTORNEY CHING: I'll join that objection.

15 THE WITNESS: Yeah, we have no procedures or no
16 policy on it, so yes.

17 ATTORNEY COOK: Q. Okay. Is there anyone in the
18 department that would be -- in your department, that you can
19 think of, that would be more knowledgeable on the topic of
20 the use of sedatives as a restraint or statistical
21 information about sedatives?

22 ATTORNEY FINE: Mischaracterizes prior testimony;
23 and asked and answered to a certain extent.

24 Go ahead.

25 THE WITNESS: Yeah. Again, we have no policy or

1 procedures on the use of sedatives. That would be for
2 medical personnel to determine that information, or a
3 doctor.

4 ATTORNEY COOK: Q. Okay. In terms of the other
5 categories when we're talking about use of force, and use of
6 force on subjects experiencing a mental health crisis, and
7 de-escalation techniques regarding use of force -- you're
8 prepared to answer questions regarding those categories; is
9 that correct?

10 A. Yes.

11 Q. And you understand as a PMK, you have to testify
12 to any information that's, you know, I guess, readily
13 available or reasonably available to you; is that correct?

14 A. Yes.

15 Q. Did you bring any documentation with you today,
16 you know, to -- as far as on those remaining three
17 categories, 7 through 9?

18 A. Did I bring --

19 ATTORNEY FINE: Vague --

20 ATTORNEY COOK: Q. Regarding --

21 ATTORNEY COOK: Okay. Go ahead. Sorry -- sorry,
22 Counsel. Go ahead.

23 ATTORNEY FINE: No, I'll just -- I don't recall
24 there being any document requests in the PMK deposition
25 notice. I don't think he was required to bring anything

1 today.

2 ATTORNEY COOK: No, not that he was required; I'm
3 wondering if he did.

4 ATTORNEY FINE: Oh.

5 ATTORNEY COOK: If he -- on his own accord.

6 ATTORNEY FINE: Got you.

7 ATTORNEY COOK: Q. Did you bring any documents
8 with you today?

9 A. All I have is a notepad that I'm going to scratch
10 notes down with, and that's it.

11 ATTORNEY FINE: My apologies, James.

12 ATTORNEY COOK: Yeah. No problem. We'll work it
13 out.

14 ATTORNEY COOK: Q. Let's see.

15 Did you review any documents in preparation for
16 this deposition today?

17 A. Yes.

18 Q. Okay. What did you review?

19 A. Reviewed Policy 300, our Use of Force policy.
20 Reviewed the video of the incident.

21 Q. Anything else --

22 A. No.

23 Q. -- that you can think of? Okay.

24 Which video of the incident did you review?

25 A. Officer Tran's video.

1 No. Sorry. Officer Tagorda's.

2 Q. Okay. There were some reports that were
3 completed -- Internal Affairs reports -- or I guess I should
4 just say -- let me just say reports that were completed, and
5 other documents. Did you review any of those documents?

6 A. I did not review it. I know that there is a
7 report because I testified in that. Or I gave my statement
8 of expertise in that one.

9 Q. So you didn't review any of those reports in
10 preparation for the deposition today?

11 A. Not -- not the IA one, no.

12 Q. Okay. There was a -- did you review the coroner's
13 report?

14 A. Yes, I did. Sorry.

15 Q. There was a protocol report, Protocol -- maybe OPP
16 or something like that, or Protocol Report with interviews,
17 like with Tran and Hall. Did you review those today -- or
18 before today in preparation?

19 A. No. I'm not familiar with that.

20 Q. Okay. What about -- there was a public summary.
21 Did you review that?

22 A. No.

23 Q. You're familiar with Learning Domain 33, though.
24 I mean, as a Use of Force expert; is that correct?

25 A. Yes. Correct.

1 Q. Okay. And just -- and I think in terms of Policy
2 300, and really the Learning -- like, Policy 300 is Use of
3 Force, and also the learning domain, Learning Domain 33. I
4 mean, really, the use of -- let me just...

5 The Section 300 is -- it kind of tracks Learning
6 Domain 33 in terms of the content and what is taught in the
7 department regarding the use of force; is that correct?

8 ATTORNEY FINE: Vague and overbroad.

9 THE WITNESS: Yes.

10 ATTORNEY COOK: Q. But that was a "yes"; right,
11 Lieutenant?

12 A. Yes.

13 Q. Okay. Like, for instance -- I mean, use of
14 force -- it has to be reasonable; is that correct?

15 A. Yes.

16 Q. All right. And then, if there is -- if it's
17 reasonably -- and we're talking about Learning Domain 33 and
18 some of the similarities with Section 300.

19 The idea is that if officers want to, you know,
20 attempt to de-escalate, they've got to use their best
21 efforts to de-escalate when reasonable and safe to do so; is
22 that correct?

23 ATTORNEY FINE: Incomplete hypothetical; vague and
24 overbroad.

25 ATTORNEY COOK: Q. Lieutenant?

1 A. Can you repeat the question? Sorry.

2 Q. Yeah.

3 When -- you know -- if there is an opportunity,
4 officers should use their best efforts to de-escalate the
5 situation with an arrest subject if it's reasonable and it's
6 reasonably safe to do so; is that correct?

7 ATTORNEY FINE: Same objections.

8 Go ahead.

9 THE WITNESS: Yes.

10 ATTORNEY COOK: Q. Okay. And sometimes with
11 confrontations -- and really, this is Learning Domain 33.

12 Confrontations where police officers -- peace
13 officers have to go hands-on -- there are certain areas of
14 the body which require, you know, maximum protection where
15 reasonable; is that correct?

16 ATTORNEY FINE: Incomplete hypothetical; vague and
17 overbroad.

18 THE WITNESS: I don't understand your question.

19 ATTORNEY COOK: Q. Yeah. For instance, if an
20 officer has to go hands-on -- you know -- there are certain
21 areas that they want to avoid. I guess, you know, attacking
22 or -- you know -- they want to avoid -- in general -- want
23 to avoid injury to, such as the head, the neck, the spine,
24 and the back. Is that correct?

25 ATTORNEY FINE: Same objections.

1 THE WITNESS: I think it depends on the situation
2 and what's occurring. If that's the only place available to
3 apply physical force, then that's what they're going to use.
4 I mean --

5 ATTORNEY COOK: Q. Right.

6 A. -- obviously we're not going to strike someone in
7 a head with a flashlight -- obviously it could be deadly
8 force -- but it depends on the situation. So I need it to
9 be a little bit more specific to kind of answer that.

10 Q. Okay. But generally the learning domain -- I
11 guess I'm just asking you, just based on your knowledge as
12 an instructor, there are areas that officers want to
13 avoid -- unless they avoid striking -- during the course of
14 an arrest, and those areas include the head, neck, back, and
15 spine. Is that correct?

16 ATTORNEY FINE: Same objections.

17 THE WITNESS: There is areas where we try to
18 avoid, yes. But, I mean, just given the situation, it just
19 depends. And I think --

20 ATTORNEY COOK: Q. Okay -- go ahead.

21 A. I think learning domain talks about officers'
22 protection where they should be protecting themselves from
23 attacks.

24 Q. Okay. But also -- during the arrest, you also
25 want to avoid -- if you can; when reasonable. Again, note

1 that I'm saying "when reasonable."

2 You want to avoid those areas on an arrest subject
3 during the course of an arrest; is that correct?

4 ATTORNEY FINE: Same objections.

5 THE WITNESS: Yes.

6 ATTORNEY COOK: Q. Okay. Similarly, those are --
7 some officers -- I mean, those are also the body parts where
8 officers need to -- they just generally need to be aware, I
9 mean, for their own safety as well; is that correct?

10 ATTORNEY FINE: Vague and ambiguous; overbroad;
11 incomplete hypothetical.

12 THE WITNESS: Yeah, there is spots that would make
13 the officer vulnerable, so yes.

14 ATTORNEY COOK: Q. All right. So I'm showing
15 you -- I mean, you're familiar with this, right? This is
16 Learning Domain 33.

17 A. Yes. It appears so. I mean, I can't see a
18 header, but yes, it looks familiar. Yes.

19 Q. Okay. And then -- you know -- it talks about
20 areas of the body which require maximum protection. Right.
21 During confrontations. Right.

22 A. Yes.

23 Q. Okay. And then there is -- my understanding is
24 that there are certain positions that officers can use --
25 well, first of all, let me just ask you. Do you personally

1 have any martial arts training?

2 ATTORNEY FINE: Relevance; outside the scope of
3 the PMK depo notice.

4 Go ahead and answer.

5 THE WITNESS: Limited. As a child, I had some
6 martial arts training. Most recently in the last eight
7 months, yes.

8 ATTORNEY COOK: Q. Okay. So -- and what is it?
9 And I'm asking -- just for context, Counsel -- maybe --
10 well, I don't think it's outside of the scope.

11 But just for context, what is that training that
12 you have?

13 ATTORNEY FINE: Same objections.

14 THE WITNESS: As a child, as a juvenile, I did
15 some Taekwondo training. Recently in the last eight months,
16 beginner jujitsu. Brazilian jujitsu.

17 ATTORNEY COOK: Q. Okay. So -- and that's what I
18 was getting at.

19 Okay. So you're familiar -- this is Learning
20 Domain 33, and we're talking about -- and they're talking
21 about ground positions for controlling an arrest subject.

22 So you're familiar with the concept of back mount,
23 top mount -- as I'm showing you on the screen -- side
24 control, and then guard; is that correct?

25 ATTORNEY FINE: Compound.

1 THE WITNESS: Yes.

2 ATTORNEY COOK: Q. Okay. And these are all
3 positions that are taught in the police academy and also you
4 learn as a beginning jujitsu practitioner; is that correct?

5 ATTORNEY FINE: Compound; vague and ambiguous.

6 THE WITNESS: I've learned some in my experience
7 with jujitsu, yes. In --

8 ATTORNEY COOK: Q. Okay.

9 A. And in the academy, I don't recall learning all of
10 these techniques. It could be something new that they're
11 training.

12 Q. Okay. But this is taught -- these positions are
13 taught in the learning domain, is your understanding, at
14 least, currently. Right? Within the last several years? I
15 mean, we're looking at Learning Domain 33: Chapter 7, and
16 that's Ground Control.

17 A. Yes, it is. I don't know what version this is,
18 but yes.

19 Q. Okay.

20 ATTORNEY FINE: Would it be possible to show the
21 witness, like, the cover page and --

22 ATTORNEY COOK: Yeah, yeah, yeah. Let me --

23 ATTORNEY FINE: -- just to give him some context?
24 I appreciate it.

25 ATTORNEY COOK: Q. Version 5.1 -- so I'm just

1 showing you the cover page of this learning domain.

2 A. Is there a revision date? I don't see that.

3 ATTORNEY FINE: It might be on page 2.

4 Copyright 2005 -- there you go.

5 ATTORNEY COOK: Q. 2005. Yeah. "Revised
6 February 2022."

7 A. Okay.

8 ATTORNEY FINE: Thank you, Counsel.

9 ATTORNEY COOK: We have it, yeah. So, I mean, the
10 most recent revisions are 2020, and then 2022. I'm just
11 going to make note of it, yeah. July 2020. It kind of
12 coincides with -- okay, I'll just leave it at that. But,
13 okay, those are the revision dates.

14 ATTORNEY COOK: Q. Okay. So I wanted to show you
15 that.

16 Stop sharing. Actually, let me just go back there
17 real quick. Let's...

18 So this side control position -- first of all, you
19 probably learned this as a beginning practitioner, is that
20 correct, and so you're familiar with it?

21 ATTORNEY FINE: Vague.

22 THE WITNESS: I'm still learning it. I'm not
23 the -- in no way any expert. Like I said, I just started
24 in the jujitsu -- Brazilian jujitsu art. I don't know
25 much about it.

1 ATTORNEY COOK: Q. Okay. But you've learned about
2 side control, and this is a technique that they also teach
3 in the learning domain, clearly; is that correct?

4 ATTORNEY FINE: Vague.

5 THE WITNESS: It's in the learning domain. I
6 don't know when it was taught. Like I said, I don't recall
7 this being taught when I went through the academy. If it
8 was revised in 2020 and then taught moving forward -- I
9 don't know.

10 ATTORNEY COOK: Q. Okay. I'm sorry, when did you
11 finish the academy again?

12 A. 2006.

13 Q. Okay. Okay. So well -- probably well before any
14 of this. Okay.

15 But in terms of side control -- that can be -- for
16 police officers -- that can be accomplished with, you know,
17 going chest to chest; or you can put your knee, for
18 instance, on the person's body as well to accomplish that;
19 is that correct?

20 A. On side control?

21 ATTORNEY FINE: (Simultaneous talking; inaudible.)

22 THE REPORTER: I'm sorry. Hold on.

23 ATTORNEY FINE: Incomplete hypothetical; vague and
24 ambiguous; overbroad.

25 Sorry. Go ahead.

1 ATTORNEY COOK: Q. Go ahead, Lieutenant.

2 A. I don't know if that's -- I guess I'm trying to
3 picture what you're trying to describe to me.

4 So what the picture depicts is someone, it looks
5 like, chest to chest. I don't see a knee on them at all.
6 So I can't say if that's an accurate side control position,
7 but -- I don't know that.

8 Q. Yeah, the picture shows chest on chest, but side
9 control can also be accomplished by using your knee; is that
10 correct?

11 ATTORNEY FINE: Vague and ambiguous; overbroad;
12 lacks foundation; incomplete hypothetical.

13 THE WITNESS: Yeah, I don't know. Again, my
14 experience with side control is the knees are on the ground,
15 maybe up against the body. But not on top, if that's what
16 you're implying -- or asking.

17 ATTORNEY COOK: Q. You agree that side control can
18 also be accomplished with placing your knees on the body?

19 ATTORNEY FINE: Same objections.

20 THE WITNESS: I don't -- I don't agree with that.
21 I don't -- I think there is a specific technique to it in my
22 understanding and in my experience. But again, my limited
23 experience with Brazilian jujitsu is very limited.

24 ATTORNEY COOK: Q. Got you.

25 And in terms of the general orders for the

1 Richmond Police Department in Section 300, which you
2 reviewed today. When we're talking about the use of force,
3 the idea is that an officer should only use the amount of
4 force that's reasonably necessary given the facts and the
5 totality of the circumstances; is that correct?

6 A. Yes.

7 Q. And generally, the use of force should be, you
8 know, reasonably proportional to the suspected seriousness
9 of the offense and the perceived level of -- or -- of the
10 threat; is that correct?

11 ATTORNEY FINE: Vague and ambiguous; overbroad;
12 incomplete hypothetical.

13 THE WITNESS: Yes.

14 ATTORNEY COOK: Q. And objectively, force can be
15 used to effectuate an arrest, or prevent escape, or overcome
16 resistance. Is that something that's also taught in the
17 Policies and Procedure Section 300?

18 ATTORNEY FINE: Same objections.

19 THE WITNESS: Yes.

20 ATTORNEY COOK: Q. Okay. And then, you know, when
21 the use of force is analyzed -- you know -- I guess at a
22 later date or -- you know -- there is factors that are
23 considered; is that correct?

24 ATTORNEY FINE: Same objections.

25 THE WITNESS: Correct.

1 ATTORNEY COOK: Q. Okay. And some of those
2 factors that are considered as to whether or not the use of
3 force is justified can be, like, you know, the immediacy and
4 severity of the threat to officers or others, or the -- and
5 the conduct of the subject; is that correct?

6 ATTORNEY FINE: Same objections; calls for legal
7 conclusion.

8 ATTORNEY COOK: Q. But again, I'm asking you
9 questions related to Section 300. So -- and you actually --
10 actually train people on use of force; is that correct?

11 A. Yes.

12 Q. So other factors that are considered in whether or
13 not the use of force is justified is, for instance -- I'm
14 just giving you some for instances -- conduct of the suspect
15 leading up to the arrest? Is that another factor?

16 A. Yes.

17 Q. Okay. And then another factor might be the mental
18 state or mental capacity of the arrest subject; is that
19 correct?

20 A. Yes.

21 Q. And then yet another factor is the subject's
22 ability to understand and comply with the officer's
23 commands. Is that a factor that's considered?

24 A. Yes, it is. I think it's one in the same, but
25 yes.

1 Q. Another factor that might be considered is the
2 availability of other reasonable and feasible options
3 besides the use of force; is that correct?

4 ATTORNEY FINE: Objection --

5 THE WITNESS: De-escalation?

6 THE REPORTER: I'm sorry. Hold on.

7 "Objection..." --

8 ATTORNEY FINE: Just vague and overbroad.

9 You can answer.

10 THE WITNESS: Like, de-escalation? Is that what
11 you're asking?

12 ATTORNEY COOK: Q. Sure. TASERS; de-escalation.

13 A. Yes.

14 Q. Yeah. To be honest, I just took the language
15 right out of Section 300. But, okay.

16 Another factor to determine the reasonableness of
17 force is the seriousness of the suspected offense; is that
18 correct?

19 ATTORNEY FINE: Asked and answered.

20 THE WITNESS: Yes.

21 ATTORNEY COOK: Q. Another factor is whether the
22 subject appears to be resisting, attempting to evade arrest
23 by flight, or is attacking the officer. Is that -- that's
24 another factor; correct?

25 A. Yes.

1 Q. So you reviewed the videos, and I just want to
2 ask. You saw when the officers arrived on the scene? For
3 instance, when Tran arrived on the scene? Is that correct?

4 ATTORNEY FINE: Asked and answered. I believe he
5 said he only watched Tagorda's video.

6 ATTORNEY COOK: Q. Okay. Okay. So you watched
7 Tagorda's video. Is that correct?

8 A. Yes.

9 Q. Okay. And then, at any point in Tagorda's video,
10 did you see the arrest subject -- and we're talking about
11 Ivan Gutzalenko, the decedent. Did you ever see him in the
12 process of engaging in, like, a violent crime? Like an
13 assault, or a rape, or robbery, or murder?

14 A. No.

15 Q. Okay. Did you ever -- at any point on Tagorda's
16 video that you reviewed, did you see Mr. Gutzalenko -- did
17 you hear him verbally threaten the officer? Such as "Hey,
18 I'm going to kill you," or "I'm going to do violence against
19 you"? Did you ever hear him say that?

20 A. No.

21 Q. At any point did the subject -- the arrest
22 subject -- and we're talking about Mr. Gutzalenko -- did he
23 verbalize any intent to harm any of the officers or any
24 members of the public?

25 A. No.

1 Q. Okay. And then based on your review of Tagorda's
2 body cam of the subject, he was intoxicated. Is that
3 correct? Or he appeared to be intoxicated?

4 A. He appeared to be under some type of influence of
5 something.

6 Q. Okay. Did he appear to be -- there was a
7 reference by one of the officers that maybe he should be a
8 5150. Do you remember that?

9 A. Yes.

10 Q. Okay. And the "5150" implies that he could have
11 also been experiencing a mental health crisis; isn't that
12 correct?

13 A. Yes.

14 Q. Some of the de-escalation techniques that are
15 outlined in Section 300 of Richmond Police Department's --
16 you know, the general orders -- are they outline tactics
17 for -- or I guess -- yeah -- alternative tactics, meaning
18 de-escalation. Is that correct? That's in Section 300.3.2;
19 is that correct?

20 THE REPORTER: "Section 300-..."

21 ATTORNEY COOK: -.3.2.

22 THE WITNESS: Again, I don't have it in front of
23 me, but can you say it again? What does it outline?

24 ATTORNEY COOK: Q. Yeah.

25 Section 300 outlines de-escalation techniques; is

1 that correct?

2 ATTORNEY FINE: Vague and ambiguous.

3 THE WITNESS: It sounds right. I don't have the
4 number in front of me, but yes.

5 ATTORNEY COOK: Q. Okay. I'll submit to you that
6 it's 300.3.2. Does that sound right?

7 A. Yes.

8 Q. Okay. And some of those -- the tactics -- the
9 basic idea is that you should -- that officers should try to
10 de-escalate if -- you know -- if time and circumstances
11 reasonably permit; is that correct?

12 A. Yes.

13 Q. Okay. And de-escalation is warranted when, you
14 know, the community and the officer -- officers wouldn't be
15 harmed; is that correct?

16 ATTORNEY FINE: Vague and ambiguous; overbroad;
17 incomplete hypothetical.

18 THE WITNESS: I don't understand the question,
19 sorry. It's to change -- one more time?

20 ATTORNEY COOK: Q. Yeah.

21 In terms of whether or not attempting to
22 de-escalate is feasible, the time to do it would be -- it
23 would be reasonable to try to de-escalate if the safety of
24 the community or officers would not be compromised; is that
25 correct?

1 A. Yes.

2 ATTORNEY FINE: Same objections.

3 THE WITNESS: Sorry.

4 ATTORNEY FINE: Also, James -- just for the
5 record, 300.3.2 -- is that what you said?

6 ATTORNEY COOK: Yeah. And I'll show it to you
7 guys.

8 ATTORNEY FINE: Okay. I'm looking at the policy
9 manual that was produced from 2018 -- 300.3.2 says "Factors
10 used to determine the reasonableness of force."

11 ATTORNEY COOK: Oh, I got the wrong one. Sorry.
12 Okay, yeah. Hold on. And I'll find the de-escalation.

13 ATTORNEY FINE: Okay.

14 ATTORNEY COOK: Okay. So in the -- I think I'm
15 really looking at 418.3. So sorry about that, folks. It's
16 in a couple places, but...

17 ATTORNEY COOK: Q. So -- and just some more
18 questions about de-escalation. I mean, do you teach
19 de-escalation tactics as part of the use of force training?

20 ATTORNEY FINE: Vague and overbroad.

21 THE WITNESS: Yes.

22 ATTORNEY COOK: Q. And some other general tactics
23 for de-escalation include the use of time, distance,
24 tactical repositioning, and also just tactical
25 communication; is that correct?

1 ATTORNEY FINE: Incomplete hypothetical; vague and
2 overbroad.

3 THE WITNESS: Yes.

4 ATTORNEY COOK: Q. Okay. And again, these tactics
5 are things that you use -- or an officer is supposed to
6 consider when they encounter, you know, someone who is
7 experiencing a mental health crisis; is that correct?

8 ATTORNEY FINE: Same objections.

9 THE WITNESS: I mean, not just a mental health
10 crisis. I mean...

11 ATTORNEY COOK: Q. Okay. But not -- but that's
12 included as part of it; is that correct?

13 ATTORNEY FINE: Same objections.

14 THE WITNESS: Yeah, we teach de-escalation to kind
15 of change the subject's behavior without going hands-on and
16 applying force. So yes, if we can do that during a mental
17 health crisis, we would de-escalate. If we have to use that
18 with a nonmental health, we will use that de-escalation
19 tactic.

20 ATTORNEY COOK: Q. Okay. This would have been --
21 now -- just based on what you know about the situation after
22 having read [sic] the video; you said you read some
23 reports -- would you agree that this was a situation where
24 Mr. Gutzalenko was experiencing a mental health crisis --
25 you know, whether it be, you know, through intoxication or

1 otherwise -- would you agree to that?

2 ATTORNEY FINE: Calls for speculation; vague and
3 ambiguous; overbroad.

4 THE WITNESS: Yeah, he definitely was having some
5 kind of -- some kind of mental situation occurring.

6 ATTORNEY COOK: Q. Okay. And by the way, you
7 also -- I mean, you -- the coroner's inquest. Right. There
8 was a point where I think Tran was quoted saying once AMR
9 got there, he was not cooperative and the belief that he
10 needed to be a 5150 hold; something to that effect. Right?
11 Like, basically the coroner's report pointed out that -- you
12 know -- at least Tran, or the officers, knew that -- or
13 considered that he might be a 5150 hold. Is that your
14 understanding?

15 A. Yes.

16 ATTORNEY FINE: Objection; vague. I'll just say
17 the coroner's report speaks for itself.

18 ATTORNEY COOK: Q. And during Tran's
19 interviews -- interviews, I should say -- I wrote
20 "interviewers."

21 During Tran's interviews, he said that -- and
22 these are the interviews that you read -- that he -- that --
23 again, during the interview, he stated that Gutzalenko --
24 that they were considering holding Gutzalenko pursuant to
25 5150. Do you remember that?

1 ATTORNEY FINE: Vague and overbroad.

2 THE WITNESS: I remember it being said, in
3 addition to some type of misdemeanor crime also being said
4 on the video.

5 ATTORNEY COOK: Q. Okay. So just considering this
6 particular situation given that Mr. Gutzalenko -- I mean,
7 there was some consideration that he would be subject to a
8 5150 hold -- it would have been appropriate to use some of
9 these de-escalation tactics, such as time, distance,
10 tactical repositioning, and tactical communication; is that
11 correct?

12 ATTORNEY FINE: In- -- my apologies.

13 ATTORNEY COOK: Go ahead, Counsel.

14 ATTORNEY FINE: Incomplete hypothetical; vague and
15 ambiguous; and overbroad.

16 Go ahead.

17 THE WITNESS: Given the situation -- the totality
18 of the situation and how rapidly this evolved, I think they
19 used de-escalation tactics appropriately. They're not going
20 to disconnect and go away. They were rendering aid
21 initially, and then they were using, verbally, de-escalation
22 tactics to calm him down. So they were using the
23 appropriate de-escalation tactics.

24 Now, are they required to distance themselves and
25 gain cover? No. Because now you create a potential flight

1 issue. So given the totality of the circumstances, they
2 used the appropriate de-escalation tactics, which was to
3 talk to him calmly and try to get him to comply without
4 force.

5 ATTORNEY COOK: Q. Is there a department policy or
6 procedure -- well -- okay. Let me ask it this way.

7 In the use of force training, is there a policy or
8 procedure regarding restraining an arrest subject in prone
9 position?

10 ATTORNEY FINE: Vague.

11 THE WITNESS: Oh -- (Internet connection issue.)

12 THE REPORTER: Sorry, the witness's feed stopped.

13 THE WITNESS: Sorry -- can you hear me? Okay.

14 ATTORNEY COOK: Q. Yeah. Go ahead, Lieutenant.

15 A. We teach different handcuffing techniques --
16 standing, kneeling, prone -- if that's what the question is.

17 Q. Yeah. I mean, that's what I was getting at, yes.
18 Okay.

19 And are there any specific policies, like cautions
20 or times when you're not supposed to use handcuffs on
21 someone, for instance, in a prone position -- prone
22 restraint position?

23 ATTORNEY FINE: Vague and overbroad.

24 THE WITNESS: There is no specific policy, no.

25 ATTORNEY COOK: Q. Okay. So when a person is

1 prone -- right? -- in a prone position on a hard surface --
2 right? -- for handcuffing. Their -- is it your
3 understanding that their chest cavity is kind of compressed,
4 and in some cases their breathing can become difficult as
5 you're -- it can become difficult for them to breathe,
6 especially when, you know, their hands are being cuffed
7 behind their backs?

8 ATTORNEY FINE: Calls for speculation; lacks
9 foundation; vague; overbroad; incomplete hypothetical.

10 THE WITNESS: I think that's kind of a lot to
11 digest. It depends. Right? It depends. How -- I need
12 more -- I need a better clarification to answer that
13 question. It's too -- it just depends on the situation.

14 ATTORNEY COOK: Q. Okay. Well, let's just start
15 off with if a person is lying on a hard surface face down,
16 their chest cavity is compressed; is that correct?

17 ATTORNEY FINE: Same objections.

18 THE WITNESS: I wouldn't say it's compressed if
19 they're lying down and there is no pressure.

20 ATTORNEY COOK: Q. Okay. But -- if --

21 A. I don't --

22 Q. Go ahead. Sorry.

23 A. No -- I mean, I'm trying to understand what you're
24 saying. Is there another way you can question [sic] it?

25 Q. Yeah. Well, let's take what you said: if there is

1 no pressure. How about if there is pressure? Say they're
2 lying face down -- you know -- and there is pressure on
3 their back -- does that make it difficult for the arrest
4 subject to breathe?

5 ATTORNEY FINE: Same objections.

6 THE WITNESS: I'm not a doctor. That's probably
7 more of a medical question. It depends on the person's
8 health, I would assume.

9 ATTORNEY COOK: Q. Okay. So based on what you
10 just said -- same situation. They're on a hard surface,
11 there is pressure on their back, and they're in bad health,
12 and even -- maybe even, you know, under the influence of
13 drugs. Does that make it hard to breathe?

14 ATTORNEY FINE: Same objections and calls for
15 expert testimony.

16 THE WITNESS: Again, it depends on -- again, I'm
17 no doctor, but it depends. How long were they on his back?
18 How long was there pressure? You know. It all depends.
19 Where was the pressure applied?

20 ATTORNEY COOK: Q. What about -- I mean, what
21 about in this situation where, you know, the officers knew
22 that -- you know, had an idea that either Mr. Gutzalenko was
23 experiencing a mental health crisis or he was under the
24 influence of something. So do you believe when he was lying
25 face down/prone -- face down on a hard surface, that it was

1 difficult for him to breathe in this situation?

2 ATTORNEY FINE: Same objections.

3 THE WITNESS: Yeah, I would -- I don't know what
4 the officers' perception was. I don't know what they were
5 thinking or what they knew at the time.

6 Given what I saw in the video, they recognized
7 some type of medical issue was -- was there. That's why
8 they had him in a recovery position, waiting for and after
9 requesting medical personnel to respond. So --

10 ATTORNEY COOK: Q. Okay --

11 A. -- again, I don't know what their perception was.
12 That's a question for them.

13 Q. Okay. But based on your -- after having watched
14 the video, did it look like to you, when Mr. Gutzalenko was
15 face down, that he was having difficulty breathing?

16 ATTORNEY FINE: Same objections; outside the
17 scope.

18 THE WITNESS: You know, he verbalized it at one
19 point in the video, but we -- we -- and throughout our
20 experience -- my experience -- people lie to us and they say
21 these ruses so we can get off -- get up -- and that allows
22 them to get up and flee. So I don't know if he was
23 experiencing that. I don't know.

24 ATTORNEY COOK: Q. Do you know if during use of
25 force or, like, just arresting a subject, has Richmond PD

1 warned against handcuffing people in the, you know, prone
2 restraint position?

3 ATTORNEY FINE: Incomplete hypothetical; vague and
4 ambiguous; overbroad.

5 ATTORNEY COOK: Q. Well, no, I'm ask- -- just to
6 be specific -- I want to make sure you understand.

7 I'm asking has there -- have there been any
8 warnings issued by Richmond Police Department in terms of
9 using the prone restraint position to effectuate an arrest?

10 ATTORNEY FINE: Same objections.

11 THE WITNESS: No. We still -- we still teach
12 prone cuffing as a position.

13 ATTORNEY COOK: Q. Sure. But have there been any
14 warnings/cautions against using the technique?

15 ATTORNEY FINE: Same objections.

16 THE WITNESS: For prone -- for prone handcuffing,
17 no. If you're applying, like -- again, I'm assuming you're
18 going to ask me about pressure on the back.

19 ATTORNEY COOK: Q. Yes.

20 A. Then I would say that, yeah, to limit that -- it
21 is a form of force, and to limit it. Based on the totality
22 of the circumstances, we understand that it could be
23 necessary to overcome the resistance of a subject, but to
24 limit it as much as we can.

25 Q. Okay. So just to make sure I got that. There has

1 been a warning -- or there has been some sort of caution
2 against putting pressure on the back while the person is
3 face down in a prone position, and the warning has been to
4 limit the use of that technique. Is that correct?

5 ATTORNEY FINE: Same objections; mischaracterizes
6 testimony.

7 THE WITNESS: Yeah. In recent -- in recent
8 cases -- yeah -- we've taught different tactics now to limit
9 applying pressure on the back when feasible.

10 ATTORNEY COOK: Q. What are the alternative
11 tactics that you've taught as opposed to a prone position?
12 Is it as opposed to that?

13 ATTORNEY FINE: Vague and overbroad.

14 THE WITNESS: I don't understand your question.

15 Other than -- if the subject is in a prone
16 position, that's the only way we're going to handcuff them.
17 We're not going to have him stand back up; we're not going
18 to have him in a kneeling position. We're going to leave
19 him in the position he's at. It creates more of an officer
20 safety concern, and concern for the safety of the subject.

21 So we're going to handcuff him if he's in the
22 prone. Once we're done handcuffing him, we're going to put
23 him in a recovery position or a seated position, depending
24 on the situation.

25 ATTORNEY COOK: Q. You said you've taught

1 alternatives to handcuffing in the prone position while
2 pressure is on the back, and I wanted to know -- my
3 follow-up question was what are some of those alternative
4 techniques. Or something to that effect. I may be -- I'm
5 paraphrasing.

6 ATTORNEY FINE: Mischaracterizes prior testimony.

7 Go ahead.

8 THE WITNESS: I think you misunderstood.

9 There is different positions to handcuffing.
10 Right? In a perfect textbook world -- yeah, we're going to
11 handcuff you kneeling, standing, or prone. Sometimes that
12 doesn't work out.

13 The goal is to place the individual, and secure
14 him in custody and handcuffs in a restraint device, and then
15 put him in some type of seated or recovery position. We
16 limit the amount of force that is reasonably necessary to
17 effect the arrest or to detain the individual. That's what
18 we teach.

19 ATTORNEY COOK: Q. Understood.

20 And again -- really -- you know, like, the focus
21 of this -- this segment is we're talking about prone
22 position and pressure on the back while the subject is in a
23 prone position. So. And what I was really trying to follow
24 up with -- you said you try to limit the use of pressure on
25 the back while the subject is in a prone position. And I

1 thought -- and please correct me if I'm wrong -- you were
2 saying that we try to teach techniques -- alternative
3 techniques to putting pressure on the back while the person
4 is in a prone position. Is that what I misinterpreted?

5 A. It sounds like it, yes.

6 If we can place knees on the ground -- if we can
7 ask the subject to comply, and he complies, then there would
8 be no need for any force. But if the subject is thrashing
9 around from left to right trying to twist his body, we're
10 going to need some type of control hold to prevent him from
11 moving around so we can handcuff that subject.

12 So the techniques that we teach are limit the
13 amount of pressure on the back. And that's -- and that's
14 what we teach. Like, we don't tell you to sit there and --
15 you know, pressure down until he's handcuffed, and then stay
16 there. Limit it and try to avoid it, when necessary.

17 Q. Do you teach officers that sometimes it may be
18 necessary to put their knee on the back when -- it may be
19 necessary sometimes, when the subject is in a prone
20 position, to use the knee to apply pressure to prevent
21 squirming?

22 ATTORNEY FINE: Incomplete hypothetical; vague and
23 ambiguous; overbroad.

24 THE WITNESS: Again, it depends on the situation.
25 We tell them you can use your hands. You can use your

1 chest. You can use your knee. You can use your partner.
2 Whatever it is. We don't just say you can only use X when
3 the person is in a prone position.

4 We do say try to limit the amount of pressure.
5 Only use the amount necessary to accomplish what you're
6 doing -- handcuffing -- and then you release it.

7 ATTORNEY COOK: Q. Okay. So it is taught that in
8 some cases you might have to use your knee to apply pressure
9 while the person is in a prone position in order to prevent
10 them -- in order to effectuate the handcuffing; is that
11 correct?

12 ATTORNEY FINE: Same objections; asked and
13 answered.

14 THE WITNESS: Yes. And to limit it.

15 If you have to -- if that's your only alternative,
16 then you use it to effect the arrest, to detain the person,
17 and then you release it. You don't stay there for a long
18 period of time; you immediately get that person in a
19 recovery position.

20 ATTORNEY COOK: Q. And back to the question -- I
21 mean, let's talk about this specific situation.

22 What about -- there was a point at which Tran --
23 he was -- you know, he was restraining -- I'm talking about
24 when he was restraining Gutzalenko, and then he switched to
25 where he -- and I'm thinking of Tagorda's video where he was

1 sort of -- had his -- he switched to the front of Tagorda,
2 right? I mean, not "Tagorda." To the front of Gutzalenko,
3 where he had sort of his head or his chest near Gutzalenko's
4 head, and he was holding his arms. Do you remember that
5 during the tape?

6 A. Yes.

7 Q. Or on the tape?

8 A. Yes.

9 Q. Okay. And what's that position called?

10 A. So that -- he was trying to do what we call a "360
11 Arm Wrap," and trying to pull it out from underneath the
12 subject.

13 Q. 360 Arm Wrap. Okay. Okay.

14 And the 360 Arm Wrap is a technique, and sometimes
15 you can use your head or you can use your chest to sort of
16 lay on top of them until you can -- and then you grab their
17 arms until they can be cuffed; is that correct?

18 ATTORNEY FINE: Vague; ambiguous; overbroad.

19 THE WITNESS: No, that's not -- you're trying to
20 remove the arm from underneath the subject.

21 ATTORNEY COOK: Q. Okay. Okay.

22 A. So laying your chest -- your head on them will
23 kind of defeat the purpose. Right? It depends on where the
24 arm is. If the arm is near the waistband, maybe you control
25 the head so it doesn't move. Or the shoulder. It just

1 depends.

2 Q. Yeah. But you -- you can use the chest or even
3 your head to control their head or their upper body, like
4 near the shoulders -- is that correct? -- in the 360 Arm
5 Wrap?

6 ATTORNEY FINE: Calls for speculation; incomplete
7 hypothetical; asked and answered; vague and ambiguous.

8 THE WITNESS: I mean, yeah, that could be a part
9 of -- that -- your body that you use to control it, and
10 apply that force.

11 ATTORNEY COOK: Q. Okay. And when you teach the
12 360 Arm Wrap, it's taught that you may need to use your
13 head, or your chest, or some other part of your body -- your
14 body -- the officer's body -- to control the head or the
15 shoulder area in order to -- in order to release the hands;
16 is that correct?

17 ATTORNEY FINE: Same objections.

18 THE WITNESS: Yes.

19 ATTORNEY COOK: Q. Okay. And -- just real quick.
20 In terms of -- and I'm going on your personal knowledge of
21 jujitsu. Right? Brazilian jujitsu. That's also called --
22 referred to -- that 360 position is also referred to as
23 North-South; is that correct? North-South position?

24 ATTORNEY FINE: Relevance; outside the scope;
25 lacks foundation.

1 THE WITNESS: And again, I'm a white belt with
2 eight months, and I go maybe once a week on a Friday on my
3 day off. So my -- my expertise on -- (Internet connection
4 issue.)

5 THE REPORTER: Sorry -- sorry. Your sound went
6 out.

7 "So my expertise on..."

8 THE WITNESS: -- jujitsu is not what you're
9 thinking.

10 ATTORNEY COOK: Q. So let me play Tagorda's body
11 cam video. Let me bring that up for you. I'm going to play
12 some portions of it, and I'll ask you some questions about
13 it.

14 So first of all, I just want to know if you can
15 see it on the screen there?

16 A. Yes, I can see it.

17 Q. Okay. And you see the numbers at the top? You
18 know, it gives you the Zulu time -- the Axon body cam time
19 is, I guess, the Zulu time, is what you guys call it.

20 A. Yes. Correct.

21 Q. Do you see that at the top -- okay.

22 And then do you see down at the bottom where it
23 says "Officer Tagorda"?

24 A. Yes.

25 Q. Okay. Is this the body cam footage that you

1 reviewed?

2 A. It appears so, yes.

3 Q. And right now I'm on the camera area. You know,
4 in the picture you see -- I think it's probably Officer Tran
5 sort of leaning over, and Gutzalenko is lying face down.
6 And then to the left of them is an officer. I believe
7 that's Officer Hall. Is that correct?

8 A. Yes.

9 Q. Okay. So let me move it forward a little bit
10 here.

11 ATTORNEY COOK: Okay. So Counsel, I'm moving to
12 3:50, and I'm going to start playing from there -- well --
13 let me go forward a little bit.

14 ATTORNEY COOK: Q. I'm going to start playing at
15 3:50 on the body cam, and then we have T18:48:33Z -- oh,
16 actually, let me share the sound here.

17 Hold on. Let me just get this going. Let's see.

18 Hold on. I'm trying to make sure I'm sharing the
19 sound.

20 Can -- okay. Let me know if you can hear this.

21 (Playing Tagorda's body camera video file.)

22 ATTORNEY FINE: (Indicating a thumbs-up.)

23 THE WITNESS: I can hear it.

24 ATTORNEY COOK: Okay. So I'll just let it play a
25 little bit.

1 (Playing Tagorda video file.)

2 ATTORNEY COOK: Q. I'm sorry. You can hear it
3 right now, right?

4 A. It stopped playing, but yes, I was hearing it
5 okay.

6 Q. Okay.

7 ATTORNEY FINE: And James, just so -- just so you
8 know. The sound is coming through okay; the video itself is
9 really, really choppy. It's kind of --

10 ATTORNEY COOK: Oh, really?

11 ATTORNEY FINE: -- actually hard to see what's
12 happening in the video. But if the questions are about the
13 sound, I think the sound is coming through okay.

14 ATTORNEY COOK: Okay. Let's see -- let's see what
15 we can do, okay?

16 ATTORNEY FINE: Okay.

17 ATTORNEY COOK: If not -- I mean, it's not that
18 important, but -- you know.

19 Okay. Let's start from here.

20 (Playing Tagorda video file.)

21 ATTORNEY COOK: Q. So I'm stopping right here. I
22 mean, I know this video is kind of choppy, but I'll stop it.
23 I'm right here at 4:51.

24 Do you see Officer Tran's knee? That's Officer
25 Tran holding him down. He's got his left hand kind of in

1 his armpit, and he's got his knee on his back as far as I
2 can see. Would you agree with that?

3 ATTORNEY FINE: Vague and ambiguous.

4 THE WITNESS: Yeah, I would say it's more of his
5 hip area because Mr. Gutzalenko's pants are pretty low
6 riding. But yes.

7 ATTORNEY COOK: Okay. So it's 4:51, and I'll go
8 forward from here.

9 (Playing Tagorda video file.)

10 ATTORNEY COOK: So I'm stopping again at 5:18.

11 ATTORNEY COOK: Q. And you can kind of see
12 Mr. Tran -- can you see Officer Tran's legs and Gutzalenko
13 is kind of in a side position? Can you see all of that,
14 sir -- Lieutenant?

15 A. Yes. I see Officer Tran's leg. I see him
16 kneeling down on the ground, yes.

17 Q. And you can see his left knee is on -- on
18 Gutzalenko's back; is that correct?

19 ATTORNEY FINE: Vague and ambiguous.

20 THE WITNESS: I would call --

21 ATTORNEY FINE: One second.

22 THE WITNESS: -- (Simultaneous talking;
23 inaudible.)

24 THE REPORTER: I'm sorry. You're all --

25 THE WITNESS: Sorry.

1 ATTORNEY FINE: Vague and ambiguous;
2 mischaracterizes the video.

3 Go ahead, sir.

4 THE WITNESS: I would call it the hip area.

5 ATTORNEY COOK: Q. But it's also -- I mean, it's
6 in the hip area, and it's also in his back; is that correct?

7 ATTORNEY FINE: Argumentative; asked and answered;
8 same objections.

9 ATTORNEY COOK: Q. Lieutenant?

10 A. I would call it the hip, side; not the back.
11 But -- that's what I would describe it as.

12 Q. Okay. You're saying his knee is not on his back
13 here at 5:18?

14 A. Based on my view of the camera at 5:18, it looks
15 like it's at his hip area. The left hip, side.

16 Q. Okay. But in this -- also -- we can disagree
17 about where Tran's knee is, but Tran is restraining
18 Gutzalenko; right? Using his body to restrain Gutzalenko;
19 is that correct?

20 A. I would say he's using --

21 ATTORNEY FINE: Vague and ambiguous.

22 THE WITNESS: I would say he's using --

23 ATTORNEY COOK: Q. Go ahead.

24 A. -- force to keep him in a recovery side position.

25 Q. Okay.

1 (Playing Tagorda video file.)

2 ATTORNEY COOK: Sorry, I jumped around here. Hold
3 on. Let me get back to where we were.

4 Okay. So I'm -- I was at 5:18; I'm at 5:17, and
5 I'm going to play from there. Sorry about that. Here we
6 go.

7 (Playing Tagorda video file.)

8 ATTORNEY COOK: So I'm going to stop it right
9 there at 6:27.

10 ATTORNEY COOK: Q. At any point during -- from
11 5:18 till now -- I mean, I know the picture is kind of
12 choppy -- were you able to tell whether or not Tran had his
13 knee on Mr. Gutz- -- or Gutzalenko's back?

14 ATTORNEY FINE: Vague and ambiguous; overbroad.

15 THE WITNESS: Yes. In the picture right here at
16 6:27, it does appear he has it placed near the -- maybe
17 right shoulder blade area.

18 ATTORNEY COOK: Q. Okay. So you would agree that
19 he has his knee on his back at this point at 6:27; is that
20 correct?

21 ATTORNEY FINE: Vague and ambiguous.

22 THE WITNESS: It looks like he's -- sorry.

23 It looks like he's trying to prevent him from
24 rolling back over -- (Internet connection issue.)

25 ATTORNEY COOK: Q. Okay. My question is you agree

1 that he has his knee on his back right here in this part of
2 the frame; is that correct?

3 ATTORNEY FINE: (Audio interruption.)

4 THE REPORTER: I'm sorry. Mr. Fine, say that
5 again? I didn't hear.

6 ATTORNEY FINE: I think Lieutenant Reina's video
7 froze after he said it looked like he was trying to prevent
8 him from rolling over. I think he froze. I just want to
9 make sure he had a chance to complete his answer. And I
10 apologize for this; I'm just trying to keep the record
11 clear.

12 ATTORNEY COOK: Yep. And I'm with you.

13 THE WITNESS: It just looks like he was trying to
14 keep him in that recovery side position, but -- because Mr.
15 Gutzalenko kept on rolling back and forth to, you know,
16 squirm away, that -- he placed that there as a barrier, if
17 you will.

18 ATTORNEY COOK: Q. Okay. But the question being
19 you agree that he has his knee on his back; is that correct?

20 ATTORNEY FINE: Vague and ambiguous --

21 THE WITNESS: The knee is --

22 ATTORNEY FINE: -- asked and answered.

23 THE WITNESS: Sorry.

24 The knee is placed at the -- what looks to me like
25 the right shoulder blade area.

1 ATTORNEY COOK: Q. Which is his back.
2 Gutzalenko's back. Correct?

3 ATTORNEY FINE: Same objections.

4 THE WITNESS: Yes, it would be in the back area of
5 the body.

6 ATTORNEY COOK: Okay. Let me play from here.

7 (Playing Tagorda video file.)

8 ATTORNEY COOK: Q. Did you hear someone tell the
9 officer -- (Inaudible.)

10 THE REPORTER: I'm sorry. "...tell the
11 officer" what?

12 ATTORNEY COOK: Q. Did you hear someone say
13 "pepper spray him" after Gutzalenko said he couldn't
14 breathe?

15 A. Yes.

16 Q. Okay. And generally, if a person says that they
17 can't breathe, do you guys -- I mean, is it okay to pepper
18 spray the person?

19 ATTORNEY FINE: Vague and ambiguous -- excuse
20 me -- incomplete hypothetical.

21 Go ahead.

22 THE WITNESS: I think that on the totality of the
23 situation in looking at this video and watching it complete
24 and not stopping, you know, every few seconds --
25 Mr. Gutzalenko is still resisting the officers' efforts.

1 And the officer says "Spray him with pepper spray" as a ruse
2 to get him to comply, which is the form of a de-escalation
3 tactic to prevent him from resisting. So it's a way for
4 them to de-escalate and overcome Mr. Gutzalenko's
5 resistance.

6 ATTORNEY COOK: Q. You're speculating, though;
7 right? You're speculating there; is that correct?

8 A. I'm -- well, it's a training tactic that we see.

9 Q. I'm just saying are you speculating that that's
10 why he said "pepper spray him"?

11 A. Well, yes, because pepper spray was never used.

12 Q. Okay. But do you know for sure that the officer
13 didn't intend to use pepper spray when he said that?

14 A. No, I don't know for sure.

15 Q. Okay. And then the officer -- at no point in this
16 video did the officer say "I'm saying that as a ruse"; is
17 that correct?

18 A. That would defeat the purpose.

19 Q. Okay. But he didn't say that; right?

20 A. No, it was not verbalized.

21 Q. Okay. And we started at 6:27, and it's 6:35. Up
22 through 6:35, Mr. -- or Officer Tran still has his knee
23 on -- well, I say "back," but you say -- well, you
24 said you -- you said the back; right? He still has his knee
25 on Mr. Gutzalenko's back; is that correct?

1 ATTORNEY FINE: Vague and ambiguous; asked and
2 answered. I think this is also a different part of the
3 video than you previously asked him about.

4 ATTORNEY COOK: Q. Lieutenant --

5 A. Yes.

6 Q. Okay. I'm going to continue to play.

7 (Playing Tagorda video file.)

8 ATTORNEY COOK: So I stopped it at 4:29 [sic]. I
9 played it from 6:27 to 4:29 [sic].

10 ATTORNEY COOK: Q. Officer Tran took his knee off
11 of Mr. Gutzalenko's back at 6:49, would you agree?

12 A. Yes, the knee is off the area you indicated as the
13 back.

14 Q. Okay.

15 ATTORNEY COOK: I'm going to play from 6:49.

16 (Playing Tagorda video file.)

17 ATTORNEY COOK: Q. So even though the computer
18 cuts it off, this is where Officer Tran takes the 360
19 position; correct?

20 A. Yes.

21 Q. Okay. And you know this -- this is where you're
22 going to soon learn that this is the North-South position,
23 but that's just commentary.

24 All right. So let me play forward.

25 (Playing Tagorda video file.)

DEPOSITION OF LIEUTENANT DANIEL REINA - PMK - VIDEOCONFERENCE

1 ATTORNEY COOK: Q. Okay. So in this frame -- I
2 stopped it at 7:38 -- you see Officer Tran has his left hand
3 on Gutzalenko's elbow and his right hand on his shoulder; is
4 that correct?

5 A. Yes.

6 Q. And Gutzalenko is in the side position; is that
7 correct? Side recovery position?

8 A. Yes.

9 Q. All right. And he's handcuffed; is that correct?

10 A. Yes.

11 ATTORNEY COOK: Okay. Starting at 7:38.

12 (Playing Tagorda video file.)

13 ATTORNEY COOK: Q. Okay. Did you see from 7:38 to
14 7:43 where Officer Tran used his right hand to move
15 Gutzalenko's shirt back?

16 ATTORNEY FINE: Vague and ambiguous.

17 THE WITNESS: I don't know if it was --

18 ATTORNEY COOK: Q. Go ahead.

19 A. I couldn't tell if it was AMR or -- moving it.
20 The AMR medic, or -- the video was kind of choppy.

21 Q. Okay. Let me start from 7:29. It might be kind
22 of choppy, but just -- if you can watch his right hand, and
23 my question is can you see Officer Tran move Gutzalenko's
24 shirt back. If you can see him move his shirt.

25 Just a moment.

1 From 7:29.

2 (Playing Tagorda video file.)

3 ATTORNEY COOK: Q. Okay. Did you -- were you able
4 to see that at that point?

5 A. The video is still choppy. I can't make it out.
6 I mean, I can -- I would be speculating.

7 Q. Okay. Did you see Officer Tran's hand move?

8 A. Yeah, it looks like he's moving out of the way of
9 the medical personnel.

10 Q. Okay. And does it look to you like he's holding
11 his shirt?

12 A. Again, I can't tell. It does look like he's
13 holding near the bicep of the left arm with his right hand.

14 Q. With his left hand, you mean.

15 A. With his right arm.

16 Q. Okay. With his right hand -- in this still
17 picture, you can tell that Mr. -- or not "Mr." -- Officer
18 Tran is holding Mr. Gutzalenko's shirt with his right hand;
19 right?

20 ATTORNEY FINE: Asked and answered; vague and
21 ambiguous; mischaracterizes his prior testimony.

22 THE WITNESS: I can't tell from this picture, no.
23 It looks like his hand is up there, and based on this video,
24 no, I don't know.

25 ATTORNEY COOK: Q. I'm just going back ten

1 seconds. Let's see if you can see it again.

2 A. Okay.

3 (Playing Tagorda video file.)

4 ATTORNEY COOK: Q. Right here. I stopped it, and
5 Officer Tran is about to move his hand back. Do you see
6 that?

7 A. Yes.

8 (Playing Tagorda video file.)

9 ATTORNEY COOK: Q. Were you able to see Officer
10 Tran grab his shirt?

11 A. It appears like that, yes.

12 Q. Okay. And right now does it appear that Officer
13 Tran is going to move the shirt backwards?

14 A. You would have to play it.

15 Q. Okay.

16 (Playing Tagorda video file.)

17 ATTORNEY COOK: Q. Right there. Did you see
18 Officer Tran move the shirt backwards?

19 A. It appears.

20 Q. Okay. You said it appears that he's moving the
21 shirt backwards?

22 A. Yes.

23 ATTORNEY FINE: I -- just one sec.

24 It's vague and ambiguous; lacks foundation. I
25 think the witness said he can't tell. But go ahead.

1 THE WITNESS: I don't know what he's doing. I
2 don't know -- it appears that way, but I don't know.

3 ATTORNEY COOK: Okay.

4 (Playing Tagorda video file.)

5 ATTORNEY COOK: Q. Okay. Did you see Officer
6 Tran? He kept his shirt in place while the injection was
7 being administered?

8 A. Again, the video is choppy. I can't tell from
9 this.

10 Q. Did it look to you like Officer Tran held his
11 shirt while the injection was being administered?

12 ATTORNEY FINE: Asked and answered.

13 THE WITNESS: No. It looked like AMR was holding
14 the shirt.

15 ATTORNEY COOK: Q. Okay.

16 (Playing Tagorda video file.)

17 ATTORNEY COOK: Q. You see the injection being
18 administered in this picture?

19 A. It appears so, yes.

20 Q. Yeah. And does it look like -- I mean, to you,
21 based on this picture, would you agree that Officer Tran is
22 holding the shirt?

23 A. No, I would not.

24 Q. Okay. So the reason why I'm showing you this is
25 I'm just asking if you can see it. To me it looks like

1 Officer Tran is assisting the EMT with -- you know, kind of
2 holding the shirt while the EMT gives the injection. That's
3 my take on it. Is that not your -- your take on what's
4 happening here?

5 ATTORNEY FINE: Asked and answered; vague and
6 ambiguous; calls for speculation; lacks foundation.

7 ATTORNEY CHING: And I'll join that objection.

8 THE WITNESS: No, it doesn't. Not to me. It
9 looks like the medical personnel is holding the shirt,
10 Officer Tran is controlling the arm from moving -- from
11 thrashing around, which obviously --

12 ATTORNEY COOK: Q. Okay --

13 A. -- again, we're stopping and going on the video,
14 but that's what it appears.

15 Q. Okay. So he's holding the arm, keeping it from
16 thrashing around while the EMT administers the injection; is
17 that correct?

18 A. Again, I would be speculating on what Officer Tran
19 is doing, but that's what it appears. I would say that
20 maybe he's trying to keep him in that recovery position.
21 Also --

22 Q. Yeah, go ahead. I'm sorry. I don't want to
23 interrupt.

24 A. That looks like what he is doing by keeping him in
25 that side position.

1 Q. So by keeping him in the side position, he's
2 assisting the EMT with giving the injection; is that
3 correct?

4 ATTORNEY FINE: Asked and answered; vague and
5 ambiguous; overbroad; calls for speculation; lacks
6 foundation.

7 ATTORNEY CHING: And I'll join.

8 THE WITNESS: No.

9 ATTORNEY COOK: Q. He's not. Okay. So -- all
10 right. So based on this -- you stated that he's holding his
11 arm, right? And he needs to hold his arm so that the EMT
12 can give him the injection; is that correct?

13 ATTORNEY FINE: Same objections.

14 THE WITNESS: No. Not correct.

15 ATTORNEY COOK: Q. Okay. Why does he have to hold
16 his arm in this situation?

17 ATTORNEY FINE: Same objections.

18 THE WITNESS: To keep him from falling forward.
19 They're trying to keep him in a recovery position.

20 ATTORNEY COOK: Q. Does it also have the effect of
21 assisting the EMT who is giving him the injection?

22 ATTORNEY FINE: Same objections.

23 ATTORNEY CHING: Join.

24 THE WITNESS: I mean, I don't think so, no. I
25 don't.

DEPOSITION OF LIEUTENANT DANIEL REINA - PMK - VIDEOCONFERENCE

1 ATTORNEY COOK: Okay.

2 ATTORNEY FINE: Hey, James? How would you feel
3 about a five-minute, just recovery break real quick?

4 ATTORNEY COOK: Yeah. I mean, I'm almost -- I
5 mean, we're almost done anyway.

6 ATTORNEY FINE: Oh, never mind. It's okay. It's
7 up to you.

8 ATTORNEY COOK: I've got a couple documents to
9 show him, but. I mean, really -- you know, not -- here --
10 hold on. Let me just look at this real quick.

11 ATTORNEY FINE: Right on. I'm not trying to rush
12 you.

13 ATTORNEY COOK: This deposition is the video, you
14 know.

15 Let me...

16 ATTORNEY FINE: I just had too much afternoon
17 coffee. That's why I'm asking.

18 ATTORNEY COOK: Yeah, yeah, yeah, yeah.

19 I mean, that's fine. Maybe take a quick break. I
20 don't anticipate us going that much longer here. So --
21 yeah, that's fine. I guess --

22 ATTORNEY FINE: Come back at, like, 3:08? Is that
23 okay?

24 ATTORNEY COOK: Okay, yeah. That works.

25 ATTORNEY FINE: Perfect. Thank you.

DEPOSITION OF LIEUTENANT DANIEL REINA - PMK - VIDEOCONFERENCE

1 (Recess: 3:03 P.M. to 3:11 P.M.)

2 ATTORNEY COOK: All right. Back on the record.

3 ATTORNEY COOK: Q. Lieutenant, did you have a
4 chance to watch [sic] Officer Tran's deposition?

5 A. No.

6 Q. Okay. In his deposition -- I'm paraphrasing, but
7 I think he stated that he moved the shirt back to assist.
8 Would he be incorrect in saying that?

9 ATTORNEY FINE: Mischaracterizes testimony.

10 ATTORNEY CHING: I'll join that objection.

11 ATTORNEY FINE: Hold on. One sec.

12 Also calls for speculation and lacks foundation.

13 ATTORNEY CHING: I'll join that objection.

14 THE WITNESS: Yeah. If he said he did it, I mean,
15 he was there.

16 ATTORNEY COOK: Q. Okay. So you also read the DA
17 report; is that correct? Or -- I forgot what you said.
18 Whether or not you did.

19 ATTORNEY FINE: Vague.

20 ATTORNEY COOK: Q. Whether or not you've reviewed
21 it.

22 A. No, I think just the coroner; not the DA.

23 Q. I put a document on the screen. I'll just ask you
24 if you read this report.

25 A. No.

1 Q. Okay. Can you see that on the screen?

2 A. Yes, I see it.

3 Q. So this is sort of a summary of -- well, let me
4 just go back up, and I'll tell you what they wrote.

5 It says "Relevant body worn camera and footage and
6 surveillance video." He said "Key portions of the incident
7 were captured."

8 Do you see that right there?

9 A. Yes.

10 Q. So basically they're summarizing a timeline based
11 on key portions of all surveillance and body worn camera
12 footage.

13 And so here is the thing. The reason why I'm
14 showing you this is -- just a moment. Let me just see.

15 Okay. And, you know, I believe that this report
16 even says that at some point he -- you know, Tran placed his
17 knee on the back, and I'm wondering if you would agree with
18 that observation. And I say that because it seemed like you
19 had -- you were hesitant to say anything about placing the
20 knee on the back. Or maybe you weren't. Maybe I'm
21 mischaracterizing that. So --

22 ATTORNEY COOK: Oh, go ahead. Go ahead, Counsel.

23 ATTORNEY FINE: Well, I don't know -- I mean, if
24 you're not done with your question, then by all means
25 continue. My apologies.

1 ATTORNEY COOK: Yeah, I haven't asked the question
2 yet.

3 ATTORNEY COOK: Q. I was just going to say, do you
4 see right here, under this entry "10:48: Officer Tran places
5 his right hand between Gutzalenko's shoulder blades and his
6 knee in Gutzalenko's lower back as he's laying on his right
7 side"? You see that entry; right? Do you see that?

8 A. Yes.

9 Q. I outlined it.

10 Okay. And do you disagree with that?

11 ATTORNEY FINE: Vague and ambiguous; overbroad;
12 calls for speculation; asked and answered.

13 THE WITNESS: And I would have to look at that
14 time frame to see where it was. Because there was different
15 points in the video that showed different angles or
16 different positioning. Because Mr. Gutzalenko was, you
17 know, moving around left to right, forward and backwards,
18 that you could tell that Officer Tran's knee position did
19 move, yes.

20 So --

21 ATTORNEY COOK: Q. All right --

22 A. -- you would have to look. At 10:48:50, I don't
23 recall -- if we did see that, I don't know at what point.

24 Q. Okay. I mean, this is one where the observation
25 is kind of an amalgamation of all body cam footage. But.

1 But you're -- so you're saying -- I mean -- again, I'm not
2 asking you about that specific statement. You're saying
3 that you can't agree with that, or what? I mean --

4 ATTORNEY FINE: Asked and answered. I mean, I
5 think what he said was he had to look at that particular
6 frame of the video.

7 ATTORNEY COOK: Counsel, I've got to say you're
8 testifying. I'm going to kind of let it slide, but you are
9 testifying.

10 ATTORNEY FINE: I mean, sure. I'll limit my
11 objection, then, to asked and answered; mischaracterizes
12 prior testimony; and argumentative.

13 ATTORNEY COOK: Q. Okay.

14 A. Yeah -- again, I don't know what 10:48:50 in the
15 video was.

16 There was a portion where his knee was on the
17 back, and I think we surmised that it was the upper back. I
18 said "shoulder blade" -- "right shoulder blade"; we agreed
19 that it was still part of the back.

20 There was a part where it is at the hip area based
21 on the angle that you, Mr. Cook, stopped it at. I don't
22 know what angle this is at, 10:48:50. I know that when I
23 watched the video of Officer Tagorda's, Mr. Gutzalenko was
24 moving back and forth, and I did see Officer Tran's knee
25 move around in different positions to kind of balance

1 himself.

2 Q. All right. This -- and now I'm referring to the
3 interview with Officer Tran, going to page 15.

4 They're summarizing, I guess, what's happening
5 during the interview.

6 And again, on page 15, it says "Officer Tran
7 physically restrained Gutzalenko by placing his hand on his
8 left shoulder and his knee on his back as Gutzalenko was
9 laying on his side."

10 Do you disagree with that statement?

11 ATTORNEY FINE: Vague and ambiguous; overbroad;
12 asked and answered. And I'm going to object that we don't
13 know what particular point of the video, specifically, this
14 was referring to.

15 Counsel, I'm not trying to testify; I just -- I'm
16 having a hard time seeing how this is fair when we're asking
17 about someone's observations of the video, and we don't know
18 what particular part of the video they're looking at, and
19 then we're asking the witness if he agrees. That's my issue
20 with it. I'm actually not trying to testify; I just don't
21 see --

22 ATTORNEY COOK: You're testifying. You are,
23 though. But -- so -- but let's -- we'll compromise by
24 just -- I can clarify my question. How about that?

25 ATTORNEY FINE: Sure.

1 ATTORNEY COOK: I mean, I get it.

2 ATTORNEY COOK: Q. Okay. So all I'm saying is
3 this is -- again, at the top --

4 ATTORNEY COOK: I'll work with you here, Counsel.
5 And Lieutenant, you don't have to call me
6 "Mr. Cook." Like, that's my dad and my grandpa.

7 THE WITNESS: I'm sorry.

8 ATTORNEY COOK: I'm kidding. It's okay. But I
9 cringe when I'm referred to as "Mr. Cook."

10 ATTORNEY COOK: Q. All right. Interviews of the
11 officers involved. The interview of -- right? So, you
12 know, the interview. Right? And -- and then they say
13 "Officer Tran provided a statement, which is summarized
14 below." And he's summarizing, but -- and then again, the
15 observation specifically.

16 And all I'm getting at is the observation that was
17 made in this summary of the interview, do you agree or
18 disagree with the statement based on what you saw -- whether
19 it's what you saw reviewing the video on your own, or with
20 me today -- that the statement that says "Officer" -- well,
21 it says "Officer Hall," but really -- I mean -- well, we can
22 say Officer Hall.

23 "Officer Hall placed his knee on Gutzalenko's back
24 and left hip while Officer Tran applied pressure to
25 Gutzalenko's right" -- "back shoulder blade from getting

1 up."

2 Do you agree with that statement?

3 ATTORNEY FINE: Vague and ambiguous; overbroad.

4 Go ahead.

5 THE WITNESS: Yes, there was a portion where
6 Officer Hall's knee was at the hip area. Mr. -- or Officer
7 Tran did have something under -- I don't know if it was his
8 knee or his arm -- at the shoulder blade. And I don't --

9 ATTORNEY COOK: Q. Okay. Good.

10 A. Yes. And I don't know what portion of the video.
11 I know that did occur, yes.

12 Q. Okay. And then the same thing. I'm just asking
13 you if you agree with this statement made in this
14 observation regarding Tran's interview that -- it says
15 "Officer Tran physically restrained Gutzalenko by placing
16 his hand on his left shoulder and his knee against his back
17 as Gutzalenko was laying on his side."

18 ATTORNEY FINE: Same objections.

19 THE WITNESS: Yeah, there was a portion of the
20 video that did show that. Again, I don't know what area of
21 this video that this investigator is writing, but that would
22 be correct. There is a portion of the video that does show
23 that.

24 ATTORNEY COOK: Okay.

25 Okay. I have no further questions for now.

1 ATTORNEY FINE: I guess I just have one, unless,
2 Mr. Ching, you have any that you would like to interpose
3 first.

4 ATTORNEY CHING: No questions from me. Thank you.

5 ATTORNEY FINE: Okay.

6 EXAMINATION

7 BY ATTORNEY FINE:

8 Q. Really, I think just one, Lieutenant Reina.

9 Assume for me that Mr. Cook is correct in what he
10 saw on the video when he said that he saw Officer Tran
11 lowering the shirt of Mr. Gutzalenko so that one of the
12 paramedics could administer an injection. Just assume for
13 this question that Mr. Cook is correct that that's what
14 happened.

15 At the time of this incident, would that have been
16 a violation of any Richmond Police Department policy?

17 A. No.

18 Q. That's it. That's all I've got. Thank you.

19 ATTORNEY COOK: No further questions here. We can
20 go off the record.

21 THE REPORTER: Before we do, can I get orders for
22 the transcript on the record, please.

23 Mr. Cook, you have the standard order with Butler.
24 The other attorneys, please, their order --

25 ATTORNEY COOK: Oh, yeah. And then I'm probably

DEPOSITION OF LIEUTENANT DANIEL REINA - PMK - VIDEOCONFERENCE

1 going to go through all the exhibits today, I guess.

2 ATTORNEY FINE: Nick Fine for the City of Richmond
3 Defendants. Just a copy of the electronic transcript,
4 please.

5 ATTORNEY CHING: Jackie Ching for Hinshaw Law
6 Firm. Just an electronic copy is great. Thank you.

7 ATTORNEY COOK: Yeah. And really, I only want an
8 electronic copy as well.

9 THE REPORTER: Okay. Thank you. I'm off the
10 record.

11 (The deposition concluded at 3:24 P.M.)

12 --o0o--
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

I, Debra J. Skaggs, Certified Shorthand Reporter
in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn;
that the deposition was then taken remotely before me at the
time and place herein set forth; that the testimony and
proceedings were reported stenographically by me and later
transcribed into typewriting under my direction; that the
foregoing is a true record of the testimony and proceedings
taken at that time.

I further certify that pursuant to FRCP Rule
30(e) (1), before completion of the deposition, review of the
transcript [] was [X] was not requested.

I further certify I am neither financially
interested in the action nor a relative or employee of any
attorney or party to this action.

IN WITNESS WHEREOF, I have subscribed my name on
this 25th day of September, 2024.

_____/s/Debra J. Skaggs_____

DEBRA J. SKAGGS, CSR No. 7857

EXHIBIT 9

**BODY-WORN VIDEO PROPOSED TO BE FILED
UNDER SEAL**

EXHIBIT 9 to the Declaration of Nicholas Fine. A true and correct copy of the video from Officer Mark Hall's body-worn camera for the subject incident.

Please click on the following link: